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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
2 -----x

3 BRANDI JOHNSON,

4 Plaintiff,

5 v.

12 CV 4460 (HB)

6 LISA STEIN, ROB CARMONA and  
7 PHIL WEINBERG,

7 Defendants.  
8 -----x

9 New York, N.Y.  
10 August 26, 2013  
10 9:45 a.m.

11 Before:

12 HON. HAROLD BAER, JR.,

13 District Judge

14 APPEARANCES

15 PHILLIPS & PHILLIPS  
16 Attorneys for Plaintiff  
16 BY: MARJORIE MESIDOR  
17 ALEX UMANSKY

17 GORDON & REES, LLP  
18 Attorneys for Defendants  
18 BY: DIANE KREBS  
19 KUUKU ANGATE MINNAH-DONKOH

20 Also present: Daphney Guillaume, Esq.

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1 (Case called; in open court)

2 THE COURT: Good morning, everybody. We have a  
3 variety of housekeeping problems to resolve.

4 First, since I don't think you have ever selected a  
5 jury here, you should know that I have read your voir dire and  
6 most of what you do I do. A couple of questions from you I  
7 have added.

8 After I do that, you get five or ten minutes to ask  
9 whatever you would like to ask. As you know the federal rules  
10 don't require that you get any time, but I find that lawyers  
11 somehow think they can bind with the jury in ten minutes.

12 I am not at all clear if that is true, but be that as  
13 it may. Then we will go to the sidebar. You will have very  
14 little time to make your decisions other than the fact that I  
15 will give them a little information about what there are in the  
16 way of challenges and you will have a few minutes, and  
17 obviously while I am doing my voir dire you will be taking  
18 notes. So I don't think that will prejudice you.

19 Hopefully we can pick the jury within an hour and a  
20 half or so. We are the only jury picking, so in fact we ought  
21 to get the jury on time. Sometimes you don't get the jury  
22 until 11 o'clock in the morning, but that ought not be the case  
23 here.

24 THE DEPUTY CLERK: 10:15 they said.

25 THE COURT: They have to see a movie or something.

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1           Let me go through the in limine motions. I think my  
2 law clerk has given you a set of the way, in fact, we come out  
3 on the exhibits.

4           So obviously where the exhibit item says "out," that  
5 means you may not offer it. On the other hand, where it's in,  
6 all you need to do is say this exhibit has been admitted. You  
7 don't have to go through any long, pro forma lengthy -- not  
8 that lengthy -- but any preliminaries. It's done. Nothing  
9 goes to the jury unless you use it. I think my rules tell you  
10 all about that. Although, from what I have read from you, I am  
11 not that clear that you have read my rules, but hopefully  
12 between us there will be no problems on that score.

13           I get in limine motions, albeit I have given you more  
14 time, but generally a couple weeks before trial, so the one I  
15 got on Saturday from plaintiff, that looks like essentially a  
16 disqualification motion is a little late, especially since most  
17 of the allegations of wrongdoing are allegations that are part  
18 of your in limine motions, and that may have been why you  
19 submitted it at least in part to begin with, it gives you sort  
20 of an extra opportunity to plead your case. However, I made my  
21 decisions prior to Saturday evening when your missive arrived.

22           While I think some of what was said in the in limine  
23 motions and repeated is at least of concern, if indeed it turns  
24 out in the last analysis that any of the allegations or the  
25 significant ones are true, I will, as I have done heretofore,

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1 simply notify the grievance committee of this Court as to my  
2 thoughts on that score. But as of now I am denying that  
3 motion.

4 Moving right along, there are five or six motions in  
5 limine. Interestingly, there is one motion which I am not even  
6 sure is responded to that I think we ought to make sure I know  
7 what we are talking about, and that's the one that has to do  
8 with plaintiff's motion to preclude defendants from offering or  
9 soliciting testimony regarding plaintiff's prior conviction.

10 What interested me most about that is that nobody told  
11 me what the conviction was for. It seems a little unfortunate  
12 for lawyers to act in that manner, although maybe they knew  
13 what they were doing and thought I shouldn't know. But perhaps  
14 we'll resolve that if you just tell me what the conviction was.

15 I now know that it's 13 years old, and I got the  
16 impression, although it required some thinking on my part --  
17 which is something I didn't have to do for the most part in  
18 your in limine motions -- I think there were only fines paid  
19 but it would be nice to know what the conviction was for as  
20 well as the sentence. So maybe the plaintiff could tell me  
21 that.

22 MS. MESIDOR: Good morning, your Honor.

23 THE COURT: Good morning again.

24 Would you go to the microphone when you talk. That  
25 would make it a lot easier.

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1 MS. MESIDOR: Your Honor, can you hear me?

2 THE COURT: Yes, indeed.

3 MS. MESIDOR: The conviction was for grand larceny.

4 It was 13 years ago. My client had five years' probation and  
5 she paid restitution. Apologies that our actual, the substance  
6 of our papers did not contain it. We had included exhibits  
7 which included the 609(b) notice that defendants had served on  
8 us, and it indicated the conviction on that.

9 THE COURT: Never to me.

10 MS. MESIDOR: I'm sorry, your Honor?

11 THE COURT: I never saw that.

12 There's a lot that apparently was served on one  
13 another that wasn't provided to the Court. But at the moment I  
14 had no idea from the in limine motion, which is all I saw, what  
15 the conviction was for. I did know it was 13 years old, and I  
16 did know that it was a fine I gather. You didn't mention that,  
17 but I gather there was a fine because you mentioned it in the  
18 papers.

19 MS. MESIDOR: Yes.

20 THE COURT: What was that?

21 MS. MESIDOR: The fine was restitution.

22 THE COURT: I see. How much was that.

23 MS. MESIDOR: I believe it was in the sum of \$200,000.

24 THE COURT: OK. What's the defendants' view on that  
25 score.

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1                   MR. MINNAH-DONKOH: Your Honor, as your Honor knows,  
2 Federal Rule of Evidence 609(b) does not automatically  
3 disqualify prior convictions just based on how old the  
4 conviction is. If the probative value outweighs the  
5 prejudicial value, then the courts have deemed that conviction  
6 is permitted to be allowed as evidence.

7                   Here plaintiff did testify that she was convicted of  
8 grand larceny approximately 13 years ago. As plaintiff's  
9 counsel has just indicated, the restitution that she was  
10 required to pay was in the sum of \$200,000. Moreover, she just  
11 finished paying the restitution approximately two years ago  
12 based on her testimony. So surely that goes towards not only  
13 her credibility but also her financial motive for bringing this  
14 very lawsuit.

15                  THE COURT: I am granting the plaintiff's motion.  
16 We'll keep it out.

17                  Let's go along to the others so that we can make some  
18 forward motion here. With respect to the specific sums of  
19 damages, I guess your first one is now moot, because the  
20 plaintiff has told us that she has no intention of suggesting  
21 specific amounts. So we don't need to tarry on that one.

22                  Jamar Cooks' testimony is a little more complicated.  
23 That's number 2 amongst the in limine motions. I have no  
24 reason to suggest or to think that you can't instruct Cooks so  
25 that we don't get into any difficulty. I'm prepared pursuant

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primarily to the state of mind exception in 803(3) to let him testify. I just want to be absolutely clear that you understand that he may not invade the province of the jury. He may not provide opinions as to whether any specific witness has or will testify truthfully. That's just not his role. So, if I hear anything that comes close to that, we will probably stop his testimony altogether, because who knows what would be next.

I don't know how to tell you that more cogently, but I am prepared to let him testify to his conversations with STRIVE employees with, once again, their state of mind as the major focus and the opinion as to their demeanor at the time, that is, if they were crying or if they were screaming, I suppose he can tell us that. But you better be very careful, because if I get the feeling that in any way, shape, or form he's providing either other evidentiary problems or invading the province of the jury, it will be all over for Mr. Cooks.

Is that perfectly clear?

MS. MESIDOR: Absolutely, your Honor.

THE COURT: OK. With respect to the plaintiff, the testimony of plaintiff's doctors, I really don't want to go through the various concerns that your discovery activities provide for me, but to suggest that they can testify as lay witnesses is just no longer, if ever, the law. Indeed, 26(a)(2)(C) provides that you have to disclose the subject matter on which each witness is expected to present evidence

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1 and a summary of the facts and opinions which the witness is  
2 expected to testify. You have done none of that. Whether or  
3 not you have provided the names is an issue of fact, which I  
4 really have gotten both sides of the story. I think we asked  
5 you on the telephone to produce some documentary evidence of  
6 your September 10 disclosure or its receipt by the other side.  
7 If you have that, you can pass it up to my deputy clerk. But  
8 the fact is that the testimony of the plaintiffs' doctors is  
9 out. That's not to say that the plaintiff can't testify to her  
10 emotional concerns or problems, but in my view she can testify  
11 that she saw two doctors or three doctors for that purpose or  
12 those purposes. They will not be testifying.

13 With respect to the punitive damage, I actually  
14 utilized the bifurcated method, but I think what happens is  
15 that should the jury mark yes, that punitive damages are  
16 appropriate, then we will have a separate hearing basically  
17 devoted to the wherewithal of the defendant to pay punitive  
18 damages, not another trial with respect to whatever it is the  
19 plaintiff is suffering or allegedly suffering from.

20 Let's move along I guess to the audio recordings.

21 I should tell you, because it was something somebody  
22 mentioned in their voir dire, what happens is, when the jury is  
23 in the box and I begin my voir dire, I ask each counsel to tell  
24 me their names, their names, and the names of everybody at  
25 their counsel table as well as the names of any witnesses,

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1 obviously, not the same witnesses if they are the same as are  
2 at the table. By the time I ask whether the jurors know  
3 anybody that may testify, they will have heard all of the names  
4 of the witnesses and of STRIVE, which I will tell them, if  
5 indeed it doesn't come up, but I think it does. Because one of  
6 you, the plaintiff will say you represent or the defendant will  
7 say you represent STRIVE, so they will obviously have the  
8 corporate, or what's not a corporation, the organization's name  
9 as well as the names of all of the witnesses. So when I ask  
10 them if they know any of them, they can answer. Hopefully you  
11 will go slowly so that they can digest the names.

12 So I think that takes care of everything but the  
13 motion to preclude. We have now taken care of the plaintiff's  
14 motion in limine.

15 On that issue I didn't mean to sound quite so brusque.  
16 My general philosophy is that if there's been ten years without  
17 another incident and there's no direct connection between the  
18 conviction and the cause of action on trial that I do not let  
19 the conviction in. Here it seems to me that the claims for  
20 discrimination are really not tied in any way, shape, or form  
21 to grand larceny. That does not mean I condone the conviction  
22 for \$200,000 of stealing, but it does in my view not have the  
23 kind of connection that would take it into the 609 permissive  
24 area for use.

25 In terms of the audio recordings, it seems to me that

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1 we went through this on the telephone, and then we got some  
2 more information and another piece of paper from each of you.  
3 I don't want to go through the details, because again, just  
4 like the experts, the doctors, there's really no way that I'm  
5 going to decide who's pulling my leg here as to the production,  
6 but there isn't much doubt that there was disobedience to the  
7 magistrate judge's order on at least one and maybe on two  
8 occasions.

9           There is also probably a likelihood, and again I'm  
10 really not a psychiatrist, but it would seem that what the  
11 defendant says makes some sense, that the reason for this  
12 delay, and I'm not sure there isn't some indication from some  
13 of the plaintiff's material, the reason in part at least for  
14 this delay was to make sure that there was no tailoring. And,  
15 as you saw from the order from the magistrate, he didn't see  
16 any, and he made it clear in any event that the material was to  
17 be fully disclosed by the 25th of February.

18           However, those are not my major concerns. Well, they  
19 are major, but they are not the only major concerns. I denied,  
20 as I did on the phone, the admissibility of these based on a  
21 variety of different concerns. One, I listened to a potpourri  
22 of the recordings. My clerk listened to all of them. They  
23 were riddled with problems, not only problems in terms of being  
24 able to hear audibly, but also in terms of hearsay and much of  
25 it was the plaintiff's discussion.

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1           There was, it seemed to me, a problem with respect to  
2 the transcripts. I would listen to a recording and it had  
3 nothing to do with the transcript I had in front of me which  
4 was denominated the transcript for that recording. Obviously,  
5 the concerns with 402 and 403 are even clearer to me from an  
6 overview of what was on those recordings.

7           So, as I said on the phone, I'm not letting them in.  
8 On the other hand, if you would like to parse out those audible  
9 portions that you believe are admissible and we can listen to  
10 them after court tonight, I will be happy to let them in.

11           But at the moment, I have no reason to let any of them  
12 in. I think they violated the discovery rules. I think they  
13 are inaudible. I think the transcripts don't coincide with the  
14 tapes. I think you violated the orders of the magistrate judge  
15 in producing them, and why you produced 12 or 13 on the first  
16 occasion and then 30, all of them on the next occasion with  
17 overlapping on each occasion, indeed overlapping in what you  
18 provided to me, I just don't know. But every lawyer has his  
19 own way of doing his own work, and those are my reasons. I  
20 think probably, as I say, the only conceivable way I could  
21 listen to others -- there are a couple that everybody agreed  
22 to. I'm obviously not doing anything to anything to anything I  
23 can actually hear.

24           I think that completes the in limine motions and my  
25 decisions with respect to them. I don't choose to have any

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1 further argument. I do hope that you have listened carefully  
2 so that you don't have any problems during the trial.

3 Where is the jury?

4 THE DEPUTY CLERK: 10:15.

5 THE COURT: I think probably a couple of other  
6 housekeeping items which I guess I will also tell the jury. I  
7 have to leave tomorrow at 3, actually I guess at 2:30. So what  
8 I propose is to ask the jury if they can work at 9:30, which is  
9 when we start, as a regular course of business, to 2 o'clock so  
10 that we save the lunch hour and another hour as a matter of  
11 fact and almost are in the same situation that we would be if  
12 we were to stay until 4.

13 Generally I stay until 5 or 5:30 depending on what is  
14 happening. I gather that you have, if I counted correctly, 10  
15 or 15 witnesses -- including the doctors, who are now not going  
16 to testify -- and I want to make it perfectly clear that we  
17 move with some alacrity here, not for my purposes, because I am  
18 not going anywhere, sad to say, even though it's Labor Day  
19 weekend, but that's the fact. However, I find that jurors,  
20 aside from those that may be going somewhere, I find that  
21 jurors get it as a regular course of business. That's my  
22 feeling about juries, and that they get it better if we move  
23 along.

24 So in part that's why I spend all the time concluding  
25 admissibility with respect to exhibits before we start so that

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2 there's no argument in front of me or either in or outside the  
3 presence of the jury about admissibility.

4 In terms of any objections to testimony, the way it  
5 works is you get up when you feel it is appropriate to object,  
6 and you give a one-word or two-word objection, like "hearsay"  
7 or "cumulative." Those are two that you might be using with  
8 some frequency. I just happened to think of them. In any  
9 event, I rule, and we move right along. We do not have sidebar  
10 conferences. Maybe I have had one, two or three maybe at the  
11 most in about 15 or so years. So don't expect that there will  
be any with respect to this case.

12 I am trying to think if there is anything else that  
13 might be valuable in terms of the voir dire.

14 With respect to openings, I will, of course, tell the  
15 jury in a preliminary charge how the trial works or moves on.  
16 But I think you ought to understand, as I'm sure you do, that  
17 openings are not argument. They are simply akin to a roadmap,  
18 and they are usually quite brief.

19 When I say that, I don't cut you off. Sometimes I do,  
20 but I don't remember ever cutting anybody off in an opening  
21 statement. But as a general rule the statistics show that  
22 after 15 or 20 minutes the jury isn't listening anyway, so you  
23 can take that for what it's worth.

24 I think the other thing that you should understand is  
25 that while you're welcome to object if it is a very important

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1 concern, as arises during usually summations, but even in  
2 opening statements, the fact is that it's the only time that  
3 the jury gets an opportunity to have a narrative from the  
4 lawyers of what's happening or what they plan to have happen or  
5 what has happened.

6 So I rarely countenance objections, as I say, unless  
7 they are indeed vital. And even there, unless it's something  
8 that can be countered once the genie is out of the bottle, it  
9 is a little difficult to put the genie back in the bottle so we  
10 can actually resolve it at the end of the summation. For  
11 instance, you can then come up if there is an objection, if you  
12 controlled yourself from standing and putting forth, and I can  
13 give a limiting thought or two to the jury. But it doesn't  
14 happen often, and I expect it not to happen here. But you  
15 never know.

16 So that's pretty much where I am in terms of how this  
17 can operate, and the jury will be here in about five minutes.  
18 So I'm going to get dressed.

19 MS. KREBS: Your Honor, I apologize. If I may for  
20 just a moment before you go get dressed.

21 THE COURT: At the podium.

22 MS. KREBS: Yes, your Honor.

23 THE COURT: Preferably.

24 What are you standing to do here for this moment?

25 MS. KREBS: I have two things that I want to address.

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2 First, obviously I just want to make sure that the record notes  
3 any objections that we have to any of your Honor's rulings that  
4 went against the defendants, just so we preserve our right on  
appeal.

5 But I have another issue that has arisen that I  
6 discovered yesterday that I just wanted to bring to the Court's  
7 attention before the jury came in.

8 One of my clients, Mr. Carmona, has a medical issue,  
9 an issue with his lower back, that it locks up every now and  
10 then, and he needs to stand and move for a moment so that he  
11 can loosen it up. If need be, we can provide a doctor's note  
12 to your Honor to demonstrate that. I just wanted to address  
13 that because it may arise during the course of the trial as the  
14 parties sit for a very long period of time that he may need to  
15 stand and just walk for a moment to loosen up his back. I  
16 wanted to respectfully request permission to do that,  
17 obviously, in a quiet and noninterruptive way, as a medical  
18 accommodation to him.

19 THE COURT: That is fine with me. Indeed, if I don't  
20 mention it to the jury, you can mention it to them in your  
21 opening.

22 MS. KREBS: Thank you.

23 THE COURT: I will be back momentarily.

24 MS. MESIDOR: Your Honor, one more thing.

25 (Recess)

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2 MS. MESIDOR: Your Honor, prior to the jury coming in,  
3 there was one clarification that I wanted to make for the  
record.

4 THE COURT: I don't think I can hear you. I know I  
5 can't hear you.

6 MS. MESIDOR: Apologies, your Honor.

7 I said prior to the jury coming in there was one  
8 clarification that I wanted to make for the record. When your  
9 Honor inquired as to how much that my client had to pay in  
10 restitution, I said \$200,000. That is incorrect. My client  
11 clarified me and said \$100,000. I know you have already ruled,  
12 but for the purposes of just clarifying it, I wanted to make  
13 sure you knew that.

14 THE COURT: And everybody has objections to any of my  
15 rulings. You don't have to even mention it. At the end all  
16 your requests will be denominated as court exhibits and  
17 everything that is in them, as we will discuss at the charging  
18 conference that I don't charge is automatically objected to, so  
19 we don't spend a lot of time at the sidebar after I give a  
20 charge talking about whether or not I said A, B, or C.

21 OK. You can sit while we get the jury situated.

22 (Jury selection follows)

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1                   THE DEPUTY CLERK: Jurors, will you please stand and  
2 raise your right hand.

3                   (A jury of 8 was impanelled)

4                   THE COURT: The rest of the panel that we had, we can  
5 excuse them.

6                   THE DEPUTY CLERK: All the potential jurors, please go  
7 back to Room 160.

8                   THE COURT: This is going to be a very brief  
9 preliminary charge. You will get lots more before it is over,  
10 but for the time being there are a couple of things you have to  
11 keep in mind. One is don't discuss the case amongst yourselves  
12 or with anyone else, including your mother, your father, your  
13 girlfriend, whomever, nobody until you have come to deliberate  
14 with all of you in the jury room at the end of the case.

15                  Once again let me emphasize that you are the finders  
16 of the facts and nobody can tell you what the facts are. It is  
17 a job for you and you alone. Let me tell you also that you may  
18 not conduct any kind of independent research about this case,  
19 not that I think that would be particularly valuable, but the  
20 matters in this case and the individuals or organizations  
21 involved in this case are simply to be understood from the  
22 standpoint of what you hear from the witness stand. You may  
23 not search the Internet, websites, blogs or use any other  
24 electronic tools to obtain information about the case or to  
25 help you decide the case. If what you need to know for your

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1 deliberations is not made clear by the lawyer, that is too bad  
2 for the lawyer. It is their job. It is not your job.

3 I want to be clear as well that while many of you may  
4 use cell phones and BlackBerrys as well as the Internet, not  
5 only should you not use those, but you must not talk to anyone  
6 about the case or use those tools to communicate electronically  
7 with any of those people. I don't know how to make a broader  
8 direction, but I think you get my gist.

9 If anyone at any time during the course of this trial  
10 attempts to talk to you or to communicate with you about the  
11 case then it is your job to tell either Bill or me about it  
12 forthwith and in this regard the lawyers cannot talk to you so  
13 it is best that you say nothing to them otherwise they will be  
14 stuck for an answer including good morning. So just leave them  
15 alone if you happen to be with them. Actually, they should be  
16 sure that you are not on the same elevator with them and simply  
17 take the next elevator since the jury should go first. If that  
18 should happen don't talk to any of them, the witnesses or the  
19 parties of whom there will be several witnesses I dare say. In  
20 other words, some of the witnesses will be parties.

21 We go quickly if I find the jurors prefer that we move  
22 along. So that we have already marked out all the exhibits  
23 that they provided and turned to admissibility will not take  
24 any time. Those that I have admitted they will simply say this  
25 is admitted as whatever the number or letter is and move right

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1 on into identification of that document.

2           There is only a short time period for the lawyers to  
3 talk to me because I don't have side bar conferences. In other  
4 words, all they do when they object is they stand up and say,  
5 "Objection, irrelevant" and I rule and we move on. So if they  
6 have some kind of legal problem, it is only during the recess  
7 period that they can explain it to me. So you should move  
8 expeditiously into the jury room, which provides probably as  
9 good a view as the other side of town as you will ever see. So  
10 it shouldn't be a heartache. If I have a problem so that I  
11 have to have a side bar, which is a rare, I guarantee we will  
12 not keep you there twiddling your thumbs for more than a minute  
13 or two.

14           I doubt that you will see any media publicity but all  
15 I can suggest is if you do or think you do, you should put it  
16 down or turn it off whatever type of media it happens to be.

17           Let me explain to you in criminal cases, which is more  
18 often what you might see on television, I think probably more  
19 of you who have sat have sat on criminal cases, the burden of  
20 proof is quite different than it is in a civil case. As you  
21 know, I guess at least from television, the criminal burden for  
22 the government is proof beyond a reasonable doubt. That is a  
23 very, very high burden. The burden in a civil case is not that  
24 difficult. It is really what we call a preponderance of the  
25 evidence of the credible evidence. So if you put the

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plaintiff's evidence, the plaintiff has the burden, on one side and the defendant's evidence on the other, in order for the plaintiff to sustain its burden of proof, all that needs happen is that the scales tip in the plaintiff's favor ever so gently, lightly, whatever another synonym is so it is a very different and much lesser burden than the burden in a criminal case.

For those of you who have not sat, let me tell you something about the way a trial runs. This is pretty much a criminal case also. First there are what we call opening statements. They are essentially roadmaps telling you what the party is going to prove. They are generally short both from a tactical standpoint primarily because if they say something that they don't prove, they will be embarrassed at some point during the trial if not in summation, but you never know. After openings the plaintiff will mount its case and it will examine witnesses on what we call direct and the defendant will cross-examine. On occasion there is redirect and recross, but the deal is that if goes in ever smaller centric circles. There is very little, if any, redirect and recross as a rule.

After the plaintiff has put in all of its evidence, the defendant will mount its case. It will call witnesses who it will examine on direct and the plaintiff will cross-examine. At some juncture the plaintiff and the defendant will rest and they will come before you again in summation. I should tell you that while you are welcome to ask during your deliberations

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for the exhibits and if necessary testimony, openings and summations are not evidence. So all you are looking to do is make a decision based on the evidence, which is essentially what you hear from the witnesses and exhibits that are admitted into evidence.

Basically there is then a charge on the law from me and then you get what is called a verdict sheet, which gives you the questions that need to be answered in order to come to a verdict and the case is yours. You go into the jury room with a verdict sheet or a copy of a verdict sheet and I will give you much more in the way of instructions about that. I just want you to understand openings and closings are not evidence so if you were to ask for a copy of the summation while you were deliberating, you wouldn't get it because it is not evidence.

There are a couple different kinds of evidence, that is direct evidence, which essentially is what you hear, smell, see and there is circumstantial evidence as well. Circumstantial evidence is evidence that is based on an inference but the inference is usually, maybe always, direct evidence. That is the example that I was always given by judges when I sat on the other side of this bench long ago. If you were to get on the subway at 86th Street and go down to 59th Street and see people getting on the subway with raincoats and umbrellas and raindrops dripping off of their raincoats and

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1 umbrellas and you went on down to 42nd Street and saw more of  
2 the same, you could draw the inference that if you were on the  
3 sidewalk, it would be raining and that is circumstantial  
4 evidence. It is equally as potent as direct evidence so long  
5 as the inference is as clear as that or the like.

6 You have a number of jobs as the finder of fact, but  
7 probably the most important is to judge credibility. So you  
8 have to be extremely careful with respect to that aspect of  
9 your role and listen very carefully to every witness and that I  
10 suppose is mostly what I need to say. I don't want you to get  
11 the feeling that you are to leave your common sense at the door  
12 because that is obviously not the case and in fact the way in  
13 which juries operate best and the reason why we have this type  
14 of diverse jury system is because basically it is your life  
15 experience that counts. That is how you come to the kind of  
16 conclusions that are at least in my experience pretty much the  
17 right decisions throughout the long time I've sat here.

18 We will talk to you some more about things as we go  
19 along, but I think that is a good start. We're ready for  
20 opening statements. If the plaintiff is ready, we're ready to  
21 listen.

22 MS. MESIDOR: I am ready, your Honor. May I approach?

23 Good afternoon, ladies and gentlemen. First and  
24 foremost, I wanted to thank you for taking the time today to be  
25 with us today and listening to this very important case we're

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1 about to lay if your hands.

2                   Ladies and gentlemen, this case is about a failure to  
3 take responsibility. Defendant corporation Strive Harlem  
4 Employment Group failed to take responsibility in response to  
5 the repeated complaints.

6                   THE COURT: Listen, ma'am, is this your summation? We  
7 will hear your summation later or we're going to hear it. I  
8 want to know what you are going to prove.

9                   MS. MESIDOR: Thank you, your Honor.

10                  You are going to hear evidence about the numerous  
11 complaints that plaintiff made to the individual defendants in  
12 this case about her repeated discriminatory contact with the  
13 founder of the organization, Mr. Rob Carmona. You are going to  
14 meet my client Ms. Brandi Johnson. You will hear evidence  
15 about her background and how she had dedicated the majority of  
16 her career to helping those who have difficulty finding  
17 employment. You will hear evidence about within the first 30  
18 days of joining Strive she was subjected to repeated comments  
19 by the founder Mr. Carmona that she deemed offensive based on  
20 her gender and on her race. You will hear evidence regarding  
21 comments that he would say things like, You are the type of  
22 woman to throw a guy under the bus. You will hear evidence of  
23 comments that he made saying, Stop walking around here with  
24 your fucking head down and get fucking to work. You will hear  
25 comments that he made when he saw that she was emotionally

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1 reacting or would cry at what he would say. Stop walking  
2 around here because nobody is going to fucking feel sorry for  
3 you.

4 You will hear that she made complaints to the then CEO  
5 Eric Treworgy, and I decision was made for her to be  
6 transferred from Mr. Carmona's supervisory authority to that of  
7 Ms. Lisa Stein. Defendant Lisa Stein was not only the head of  
8 HR but was also the CFO of the company. You will hear evidence  
9 that Ms. Johnson complained to Ms. Stein about the way that Rob  
10 had treated her, the way that he was speaking to her. But you  
11 will also hear evidence that these complaints went unaddressed,  
12 unanswered and on occasion Ms. Stein would use the power that  
13 Mr. Carmona had over plaintiff to reprimand her. You will hear  
14 evidence that Ms. Johnson brought a complaint that a  
15 participant had of sexual harassment to the attention of Mr.  
16 Carmona and one other individual. You will hear evidence that  
17 Mr. Carmona's responses to the sexual harassment complaint  
18 saying that nothing would tell him that the girl didn't want it  
19 and that she was ugly as fuck and the person who was accused of  
20 doing these sexual harassing behavior wouldn't be interested in  
21 her anyway.

22 You will also hear evidence regarding a conversation  
23 that Ms. Johnson was having with another participant by the  
24 name of Dwayne Hubbard in which Mr. Carmona abruptly  
25 interrupted their conversation and escorted Mr. Hubbard.

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Opening - Ms. Mesidor

1               you will hear evidence that when Ms. Johnson attempted  
2 to close the door because there was an auditor walking around  
3 the office that Mr. Carmona called her into his office and  
4 said, Did I tell you to close my fucking door? If I wanted my  
5 fucking door closed, I would have fucking closed it myself.

6               Again, Ms. Johnson reported her treatment at the hands  
7 of Mr. Carmona to Ms. Stein and nothing was done.

8               Because continuously she would complain and nothing  
9 was being done, you will hear evidence that Ms. Johnson  
10 recorded a conversation that she had with Mr. Carmona. On the  
11 first and only instance that she recorded Mr. Carmona, you will  
12 hear evidence that Mr. Carmona called her a nigger eight times,  
13 said that she acted like a nigger, that she was dumb as shit,  
14 and she was a nigger.

15              When Ms. Johnson objected and said I am offended by  
16 that, I have grown while I have been here, I think that I have  
17 taken steps to become a better person, you will hear evidence  
18 that Mr. Carmona said: I don't care. I told you you weren't  
19 going to like it. Ask anyone at STRIVE and they will agree  
20 with me that you are a nigger.

21              Finally, when Ms. Johnson obtained legal  
22 representation, you will hear evidence that STRIVE was formally  
23 notified of the series of discrimination complaints that she  
24 had. At that point, you will hear evidence that the CEO  
25 purportedly began an investigation.

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Opening - Ms. Mesidor

Now, the defendants will tell you that STRIVE has a clear antidiscrimination policy. You will hear evidence that the antidiscrimination policies prohibits slurs, it prohibits harassment and the like.

You will hear evidence that although the CEO was doing an investigation of Ms. Johnson's discriminatory complaints, that a series of paybacks or what we lawyers like to call retaliation began to occur. Although Mr. Carmona was the person in question who was purportedly doing the harassing behavior, you will hear evidence that Mr. Carmona tried to get other employees to separate themselves from Ms. Johnson.

You will hear evidence that Mr. Carmona told employees not to be used by her and use whatever goodwill that he had built with the employees to try to get them to isolate her.

You will hear evidence that, in addition to that, that Mr. Carmona also spoke to a participant by the name of Jamar Cooks and told him not to associate with Ms. Johnson, even though you will hear evidence that he was told to keep this investigation confidential, so that the integrity of the investigation could be upheld, you will hear evidence that Mr. Carmona told Mr. Cooks that because Ms. Johnson had a situation with the company, and he didn't want him to get wrapped up in it, that he should no longer come around STRIVE and not come to see Ms. Johnson.

Further acts of retaliation, or payback, include you

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Opening - Ms. Mesidor

1 will hear evidence that Mr. Carmona slammed the door in  
2 Ms. Johnson's face in the presence of the CEO, Mr. Phil  
3 Weinberg, who was conducting the investigation, and he did  
4 nothing; in the presence of the CFO and head of HR, Ms. Lisa  
5 Stein, and she did nothing.

6 You will hear evidence that Mr. Carmona would stare  
7 Ms. Johnson down in the office. He would make comments while  
8 walking by her desk like, We're about to put this bitch in a  
9 snatch.

10 You will hear evidence that on a particular occasion  
11 when Ms. Johnson had a visitor, as it was a custom for her to  
12 have visitors, that STRIVE started a brand-new policy the day  
13 after her visitor came saying that visitors now were no longer  
14 allowed. As a result, each time an act of payback, or  
15 retaliation, came along, you will hear evidence that  
16 Ms. Johnson complained, and she complained directly to the CEO,  
17 Mr. Weinberg.

18 But instead of admonishing Mr. Carmona, or anything of  
19 the sort, you will hear evidence that Mr. Weinberg asked  
20 Ms. Johnson to work from home. Just a few short weeks after  
21 Ms. Johnson made her written complaint via her attorney to  
22 STRIVE, you will hear evidence that for the first time  
23 Mr. Weinberg inquired as to what happens to people when their  
24 grants expire.

25 It is for that reason, that excuse, or what we lawyers

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Opening - Ms. Mesidor

1 call pretext, that they used to terminate Ms. Johnson.

2 They indicated that her grant, that a grant that her  
3 position was purportedly funded by, had ended, and that she no  
4 longer was needed by STRIVE. You will hear evidence that  
5 Ms. Johnson was never notified or otherwise led to believe that  
6 her position was funded by any grant. You will hear evidence  
7 that the grant was originally due to expire in January, and for  
8 a period of three to four months without being renewed,  
9 Ms. Johnson continued to work and be paid by STRIVE before an  
10 extension actually came through.

11 You will hear evidence that others whose positions  
12 were in a portion funded by this grant continued to work at  
13 STRIVE, and you will hear evidence that STRIVE continues to  
14 have a steady flow of grants that continue to come in.

15 Ladies and gentlemen, if I am able to bring this  
16 evidence that I have represented to you that you will hear  
17 during the course of this trial, when I come back to this  
18 podium again to do a summation, we will be asking you to find a  
19 determination for plaintiff and to award damages as well as  
20 punitive damages.

21 Ladies and gentlemen, I thank you for your attention.  
22 I ask that while you discern what is being placed at the  
23 witness stand, that you discern the motives of each and every  
24 one of those witnesses and their respective biases, and you  
25 decide for yourselves who you believe is telling the truth and

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Opening - Ms. Mesidor

1 who isn't.

2 Thank you.

3 THE COURT: Does the defendant choose to open?

4 MS. KREBS: Yes, your Honor.

5 Good afternoon, ladies and gentlemen of the jury.

6 Before I get started on my statement, let me just say thank you  
7 again for your service here. I know as the judge said you  
8 didn't have much of a choice in showing up, but we do  
9 appreciate it nonetheless, and we know that you, all of us here  
10 know that you will pay close attention and deliver a just  
11 verdict in this case.

12 Well, after hearing opposing counsel describe what she  
13 expects to prove as the work environment that allegedly existed  
14 at STRIVE, it seems a wonder that we don't just call out a  
15 firing squad and get it over with right now.

16 But it is important, ladies and gentlemen, to remember  
17 that sometimes a good story is just a story. This case can  
18 actually be boiled down to one simple concept: No good deed  
19 goes unpunished.

20 Now, of course, you will learn through this trial that  
21 my clients don't really believe in that credo as a general  
22 rule, because if they did, they would not have dedicated their  
23 lives to performing good deeds on a daily basis in their  
24 careers. But you will learn through the evidence that in this  
25 case, as applied to the plaintiff, it does hold true.

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Opening - Ms. Krebs

1           I would like to take a moment now to introduce you to  
2 each of the defendants.

3           First, at the end of the table, you will learn that  
4 this is defendant Lisa Stein. You will learn that she is 45  
5 years old, and she is the former chief financial officer and  
6 chief operating officer of STRIVE. You will learn that she is  
7 one of the people who participated in the decision to hire the  
8 plaintiff in the first place. You will learn that she has  
9 always been interested in working in the not-for-profit area  
10 and that her entire adult professional career, approximately 20  
11 years, has been in not-for-profit or public sector work.

12           Next to her you will learn this is the individual  
13 defendant Philip Weinberg. You will learn that Mr. Weinberg is  
14 39 years old; he's married with a daughter. He is, you will  
15 learn, the current chief executive officer at STRIVE. The  
16 evidence will show that he has always been interested in public  
17 service and having a career that makes a positive impact on  
18 communities. And he has a long history of work in both the  
19 private, public, and not-for-profit sector.

20           Finally, next to him, is Mr. Rob Carmona.

21           You will learn that he is 61 years old, he's married  
22 with two adult daughters. As you can see, Mr. Carmona is a  
23 black man, and you will learn he is also of Puerto Rican  
24 descent. You will learn that he is one of the cofounders of  
25 STRIVE. He as well was one of the people who participated in

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Opening - Ms. Krebs

1 the decision to hire the plaintiff in the first place.

2 You will learn that he has spent decades working in  
3 the not-for-profit sector for more than 25 years with STRIVE.

4 I also do want to make one mention that was spoken  
5 about with the Court beforehand. Mr. Carmona has a medical  
6 condition that he has, a lower spine injury. Occasionally he  
7 may need to stand up and walk for a moment to lessen the  
8 stiffness in his back. Please do not take that as any  
9 disrespect or lack of attention to this matter. It is simply  
10 for medical reasons.

11 I am going to talk for a moment -- in another moment I  
12 am going to talk a little bit more about Mr. Carmona because I  
13 think that, as you will learn through this trial, his history  
14 is very relevant to this case. But first, now that I have  
15 introduced you to the individual defendants I also want to  
16 introduce you to the entity defendant, STRIVE. The  
17 not-for-profit organization that is the defendant in this case.

18 You will learn that STRIVE stands for Support and  
19 Training Result In Valuable Employment.

20 The evidence will show that that is a not-for-profit  
21 organization created in the 1980s in East Harlem for the sole  
22 purpose of serving a segment of society that is in many ways is  
23 invisible, those that are disconnected from the workforce,  
24 whether due to poverty, due to former incarceration, due to an  
25 individual being a recovering addict or having other personal

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Opening - Ms. Krebs

1 issues. And its mission you will learn is to help these  
2 individuals get into and stay in the legitimate workforce.

3 Now, this is not your typical job training and  
4 placement agency. You will learn that it was designed to  
5 address a specific void that the founders found, which was that  
6 when people of this segment of society were put into the  
7 workforce, for some reason retention was very low.

8 You will learn that the determination that they  
9 reached was that this was either because these individuals  
10 didn't have an adequate understanding of what was really  
11 expected of them in the atmosphere of the workforce, aside from  
12 the specific skills associated with the job, or because they  
13 had other external or mindset issues that were adversely  
14 impacting their ability to stay in their jobs.

15 This was something that STRIVE designed, was designed  
16 to address based on an empowerment model that's used by  
17 therapeutic communities and residential rehab centers. You  
18 will learn that the simple concept behind this is that there is  
19 a belief that every individual has the power to change and  
20 simply sometimes all they need are the tools to do so.

21 So you will learn that there are a couple of things  
22 about STRIVE that are a little unique. First of all, they have  
23 what is called attitudinal and job readiness training. This is  
24 about a monthlong training that teaches participants to  
25 acclimate into the workforce when they really don't have a

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frame of reference for it. That will include, you will learn, things like how to follow instructions, how to accept criticism, how to work as a team, and other skills such as interviewing, filling out a résumé, filling out a job application, things that many of us may take for granted, but that other individuals may have no concept of.

And you will learn that there is a therapeutic component to this training. The participants delve into root causes of their inability to obtain or keep a job and it helps them develop the correct attitude for the workplace to overcome those employment obstacles and transform their lives.

THE COURT: Ms. Krebs, I think this is all very interesting now, but how it is connected to this discrimination case?

MS. KREBS: Thank you, your Honor. I am going to be getting up to that.

THE COURT: You are going to get to that.

MS. KREBS: I absolutely will, your Honor.

THE COURT: Well, soon.

MS. KREBS: Let me talk a little bit now about the philosophy behind STRIVE as you will learn, because it is based on a therapeutic community approach. They take a very tough love, no excuses stance. Participants are required to own up to their lot in life, to accept responsibility for the choices they made, and how it made it that they've got to that

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1 particular point, because only then will they be able to  
2 strive, to grow and develop.

3 This requires complete honesty and truthfulness in  
4 communications, without any sugarcoating. You will learn that  
5 this mode of communication at STRIVE is not only with the  
6 participants, but it carries over with the employees as well.

7 Indeed, you will learn that approximately one-third of  
8 the employees at STRIVE are former participants who are now  
9 paying it forward to help others the way STRIVE helped them.  
10 In fact, two-thirds you will learn of the employees, one-third  
11 that are the participants and another third that were not, were  
12 members of that disenfranchised segment of society that STRIVE  
13 serves. You will also learn that the majority of employees are  
14 women and the vast majority of employees are people of color.

15 Now, this model based on the therapeutic community  
16 that I just mentioned was designed by the defendant Rob  
17 Carmona. It was designed by him, as you will learn, because he  
18 learned firsthand how effective it could be.

19 I am not going to give you his entire story,  
20 Mr. Carmona. You will hear him on the stand. But you will  
21 learn that Mr. Carmona was a drug addict by the time he was 15  
22 years old and went through many troubles as a result, including  
23 criminal problems. He got arrested for robbery. And when he  
24 was in jail awaiting sentence, he had a meeting that changed  
25 his life. A therapeutic community representatives came to the

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1 jail and spoke with the participants there about joining a  
2 therapeutic community as an alternative to their sentence if it  
3 was a crime that was connected with drugs and they had never  
4 had therapy or treatment before.

5 Mr. Carmona took them up on that. And, quite frankly,  
6 you will learn that at the beginning it was just to avoid jail,  
7 he did the math and figured being in a therapeutic residential  
8 community was better than being in jail.

9 But it actually changed his life. He went through  
10 that tough-love, no-excuses training on himself. It was a very  
11 hardcore philosophy. Everyone, from the other participants to  
12 the counselors and the psychiatrists constantly held his feet  
13 as well as everybody else's feet to the fire. They wouldn't  
14 allow him to blame others for his responsibility and for his  
15 lot in life, to play the role of the victim.

16 He was called out on his behavior when it was  
17 inappropriate, when it was self-destructive and there was no  
18 sugarcoating for excuses made for him. He learned from that.

19 Harsh language was often used during this process. In  
20 fact, sometimes other black participants, counselors and other  
21 leaders, would tell him if he was acting like a nigger.

22 You know what, this tough love, it all worked. It  
23 turned his life around. The day that he went into that  
24 therapeutic community was the last day he took drugs.

25 While he was part of that community, he turned it

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1 around. He got a job, he went to college. He went to Columbia  
2 University to get his master's in social work, and he's been  
3 working in the not-for-profit sector every day since.

4 It was all because of this therapeutic community that  
5 cared enough to reach out to him, one of the disenfranchised,  
6 and to teach him through tough love and plain sometimes very  
7 harsh talk that you're responsible for your own fate and you  
8 need to accept that to improve your lot in life.

9 So when he was approached by the other founders with  
10 an idea for an organization, for what became STRIVE based on an  
11 empowerment model, is it any wonder that he chose to base it on  
12 an organization whose philosophy had so impacted and as you  
13 will learn during this trial that became his personal  
14 philosophy as well, not just with the participants but with  
15 everyone, the other employees. Every time he would do that, he  
16 would talk in that way to help people grow and improve the same  
17 way it was done for him. He did it the way he knew, the same  
18 way it was done for him.

19 So it is very important to keep this in the backdrop  
20 of your mind when you are listening and analyzing the  
21 allegation that the plaintiff makes.

22 Now, I am going to turn very briefly to some of the  
23 specific allegations in the case, but I don't want to take up  
24 too much more of your time.

25 First, my opposing counsel has indicated that

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1 plaintiff is going to have you believe that she was fired as a  
2 result of some sort of discrimination or retaliation. But the  
3 evidence will show that that is not possible, because the  
4 length of her position was predetermined at the time of the  
5 hiring process.

6 You will learn that she was hired pursuant to a grant  
7 that was received from the U.S. Department of Labor in  
8 connection with a green jobs initiative which you will learn  
9 more about. That grant you will learn was internally at STRIVE  
10 called pathways out of poverty. The grant had a specific term.  
11 It was set to end originally January 28, 2012, and then later,  
12 when an extension was granted in January, the extension until  
13 the end of June 2012.

14 You will learn and hear evidence that this position,  
15 the plaintiff's position was created pursuant to that grant and  
16 funded 100 percent by that grant. You will also hear evidence  
17 that plaintiff was well aware of this. You will hear evidence  
18 that all of the applicants for this position were told this  
19 during the hiring process.

20 You will also find and learn evidence that in the past  
21 when a position was 100 percent funded by a specific grant and  
22 that the sole purpose of that job was only to carry out the  
23 mission within that particular grant, that at the end of that  
24 grant the position was sunsetted and therefore the person was  
25 let go. That is all that happened here, ladies and gentlemen

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1 of the jury, as the evidence will show.

2 Now, with respect to the claims of this harassing  
3 environment, what the plaintiff is claiming is that, primarily  
4 through Mr. Carmona, there was a work environment that was  
5 created that was hostile to her because she was a woman and  
6 because she was black.

7 Now, understand the judge will instruct you on the law  
8 later, but what she is claiming is that STRIVE in general and  
9 Mr. Carmona in particular had an animus against women and  
10 against black people.

11 Of course, as you will learn, most of STRIVE's  
12 employees are women and most of them are black. And  
13 Mr. Carmona is himself black, as you yourselves can see.

14 In hearing the allegations that plaintiff testifies to  
15 during the trial, I want you to keep in mind this hardcore  
16 nonsugarcoating philosophy that Mr. Carmona had in the way he  
17 lived his life with all of those around him. The evidence will  
18 show that it was this philosophy that was the impetus for any  
19 of the statements that were made and not race or gender.

20 Of course, the centerpiece of plaintiff's case, as was  
21 already introduced to you by opposing counsel, was a  
22 conversation in which Mr. Carmona during that conversation told  
23 plaintiff that she was acting like a nigger. The same thing  
24 that had been told to him in the past when people were trying  
25 to steer him straight. But you do not need to take the

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1 plaintiff's word for it, you do not need to take Mr. Carmona's  
2 word for it in terms of the interpretation or the description  
3 of that conversation, because it's been memorialized on tape,  
4 so you will be able to hear the words, the tone, the  
5 inflections and the overall message.

6 You will hear the tape, and you will be able to reach  
7 your own conclusions. And in listening to it the evidence will  
8 show you that Mr. Carmona was trying to help the plaintiff in  
9 this CHECK conversation and using tough words to get the  
10 message across.

11 In fact, the evidence will show, you will hear him say  
12 that he was telling her that she had the capacity to go  
13 straight to the top if she would just stop letting her emotions  
14 control her. Again, ladies and gentlemen, I do not need you to  
15 take my word for it either. The evidence will show that. You  
16 will hear the tape.

17 Now, plaintiff apparently wants you to believe that  
18 the use of the word nigger in that conversation was so shocking  
19 and it shook her world, but the evidence will show that she  
20 couldn't have been all that shocked because she used that word  
21 all the time in STRIVE offices.

22 The evidence is also going to show the strange timing  
23 of her internal written complaint to STRIVE, the first time the  
24 evidence will show in almost two years of employment that she  
25 took this step. The evidence will show that she took this step

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1 and made this complaint just after she had had a string of  
2 conversations with various members of STRIVE about problems  
3 with her performance and with her conduct, such as attire  
4 issues, problems with the manner that she communicated with  
5 other employees in the office; and in fact, issues where she  
6 was counseling people, participants, when that was neither her  
7 role nor within her skill set and could have been contrary to  
8 the goals of the participants themselves.

9                 Timing is also interesting you will see because it was  
10 only about two months before she knew her job was sunsetting,  
11 and she was going to have to be out there looking for another  
12 job and potentially unemployed for some time. Only then did  
13 she take the step of filing this complaint.

14                 More so the evidence will show that Mr. Carmona was  
15 actually one of the plaintiff's staunchest supporters. The  
16 evidence will show that when others expressed concern about her  
17 performance and whether or not she could continue working  
18 there, Mr. Carmona advocated to them on her behalf, believing  
19 that she could turn her path around.

20                 So you will see, ladies and gentlemen of the jury,  
21 that the evidence will show there was no hostile work  
22 environment based on race or gender.

23                 My opponent also mentioned a claim of retaliation  
24 arising out of this complaint that was suddenly filed less than  
25 two months before her job was to end.

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Opening - Ms. Krebs

1           The evidence is going to show that STRIVE did exactly  
2 the right thing upon receiving that complaint. The evidence  
3 will show that it was Mr. Weinberg who received the complaint  
4 personally on behalf of STRIVE. Upon reviewing it he  
5 immediately advised the plaintiff that he had received it, that  
6 he considered it important, that he would begin an  
7 investigation, and that he would keep it confidential to the  
8 best of his ability.

9           The evidence will show that Mr. Weinberg, with one of  
10 STRIVE's board members Andy Rahl immediately embarked upon an  
11 investigation speaking with many different people, individuals  
12 that had been raised in that complaint as individuals with  
13 knowledge.

14           The evidence will show that they did not speak to  
15 anyone about the complaint unless it was necessary for the  
16 investigation and that when doing so those individuals were  
17 advised not to discuss it with others.

18           The evidence will show that, to the extent the  
19 plaintiff felt isolated after filing her complaint, that was  
20 due to her conduct. She asked initially to work at home the  
21 evidence will show. In addition, the evidence will show that  
22 she told others at STRIVE about her complaint.

23           Ladies and gentlemen of the jury, I want to end my  
24 opening remarks with where I began. The evidence will show  
25 that this case is proof of the credo that no good deed goes

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1 unpunished. The evidence will show that plaintiff was given a  
2 job, a wonderful opportunity, given several opportunities to  
3 succeed and improve even when her performance was not up to  
4 par. She was given warnings, she was given counselings, and  
5 she repaid this by filing this meritless lawsuit.

6 All I ask you, ladies and gentlemen, is that you keep  
7 an open mind throughout this entire process. Listen to each  
8 one of the witnesses that come before you. Listen to the  
9 cross-examinations. Examine those documents carefully. Listen  
10 to the recordings. Consider them all against the backdrop of  
11 STRIVE's purpose, its mission, and its philosophy.

12 And in the final analysis, at the end of this case I  
13 will ask that you return with a just and true verdict in this  
14 case one, in favor of the defense.

15 Thank you.

16 THE COURT: All right. Ladies and gentlemen, it's  
17 really close enough to lunchtime. Why don't we adjourn now and  
18 return at 2:15.

19 Do not discuss the case amongst yourselves or with  
20 anybody else. I should tell you that tomorrow we have to  
21 adjourn somewhere around 2 to 2:30. I kind of like to not miss  
22 any time if I can avoid it. There really are a couple of  
23 choices, but my preference is that we start at 9 o'clock and  
24 the government provide coffee and doughnuts at around 11 and we  
25 go until 2 and then be finished with the day.

D8qnjoh3

Opening - Ms. Krebs

1           So, if you can handle that, I just don't know whether  
2 you can get here at 9 o'clock, but if you can all agree to do  
3 that -- there are plenty of other options -- that would be my  
4 choice. In any event, you are excused now. Do not discuss the  
5 case amongst yourselves or with anybody else. We will see you  
6 at 2:15.

7           (Luncheon recess)

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D8qnjoh3

Opening - Ms. Krebs

## 1 A F T E R N O O N S E S S I O N

2 2:15 p.m.

3 THE COURT: I am going to assume that we can start at  
4 9:00 in the morning tomorrow and you will have appropriate  
5 refreshments waiting for you, which ought to bring you on time  
6 hopefully. We'll have a recess and you can bring something or  
7 there may be something left. We'll go until 2:00 and it will  
8 be over for the day. We might not have lost more than an hour  
9 more than what we might have had.

10 Are we ready for the plaintiff's first witness if the  
11 plaintiff is ready to put her first witness on the stand?

12 MS. MESIDOR: We're ready, your Honor. The plaintiff  
13 calls Ms. Brandi Johnson to the strand.

14 THE DEPUTY CLERK: Raise your right hand.

15 BRANDI JOHNSON,

16 called as a witness by the Plaintiff,

17 having been duly sworn, testified as follows:

## 18 DIRECT EXAMINATION

19 BY MS. MESIDOR:

20 Q. Good afternoon, Ms. Johnson.

21 A. Good afternoon.

22 Q. Are you comfortable?

23 A. Not really, but I am okay.

24 Q. Ms. Johnson, could you please state your full name for the  
25 record?

D8Q6JOH4

Johnson - direct

1 A. Brandi Johnson.

2 Q. How old are you?

3 A. 38.

4 Q. Where do you live?

5 A. Manhattan, New York.

6 Q. What is your highest level of education, Ms. Johnson?

7 A. Masters degree.

8 Q. What is your marital status?

9 A. Single.

10 Q. Do you have any children?

11 A. Two.

12 Q. What are their ages?

13 A. My daughter is 15 and my son is 17.

14 Q. Ms. Johnson, did there come a time when you began to work  
15 at an organization known as STRIVE?

16 A. Yes, ma'am. Back in May 2010.

17 Q. How is it that you came to work at STRIVE?

18 A. I applied for a position as a director of affiliated  
19 services of Ideal.org.

20 Q. What is Ideal.org?

21 A. It is a career or employment website that hold open  
22 positions for nonprofit.

23 Q. What, if anything, did you do to further your application  
24 for a job at STRIVE?

25 A. I sent in my resume and cover letter.

D8Q6JOH4

Johnson - direct

1 Q. Did there come a time when you were actually brought in for  
2 an interview?

3 A. Yes. I was contacted by Lisa Stein.

4 Q. And during that interview, what was your understanding of  
5 what you would be doing within your position?

6 A. I was -- my understanding was I was going if I was hired  
7 for the position I would be the director of affiliated services  
8 that entails bringing STRIVE back nationally back online as  
9 well as research and other grant opportunities for the  
10 organization.

11 Q. What do you mean by bringing them back online?

12 A. Prior to me becoming employed at STRIVE, STRIVE national  
13 has I believe 20 or 21 affiliate organizations and the  
14 affiliates STRIVE national partnership to my understanding was  
15 not in good standings.

16 Q. What do you mean by it wasn't in good standing?

17 MR. MINNAH-DONKOH: Objection.

18 THE COURT: Sustained.

19 Q. During the course of your interview what was your  
20 understanding as to what the salary would be?

21 A. We never discussed salary.

22 Q. Did there come a time when the position was offered to you?

23 A. Yes. After the second interview -- at the close of second  
24 interview, I was offered the position of coordinating  
25 assistant, which was different than director of affiliated

D8Q6JOH4

Johnson - direct

1 services. Lisa Stein assured me it was just a title change but  
2 the same position.

3 Q. What, if anything, in your work experience or background do  
4 you believe qualified you for that position?

5 MR. MINNAH-DONKOH: Objection.

6 THE COURT: I will allow it.

7 A. Answer?

8 Q. Yes.

9 THE COURT: You can answer.

10 THE WITNESS: Thank you.

11 A. Several years working for nonprofit, one of the  
12 organizations being a partnership with STRIVE which is the  
13 Consortium for Workers Education.

14 Q. And how long did you work at CWE?

15 A. I think two or three years.

16 Q. What was your understanding as to what the funding source  
17 of your particular position was?

18 A. There was no understanding. We never discussed funding  
19 sources. I can recall during the interview that I specifically  
20 indicated that I did not want another position that had a time  
21 period because my prior positon at Consortium Workers Education  
22 was grant funded. In addition, I had already -- I was offered  
23 a position at the National League of nursing, which I would  
24 have taken if it was discussed that the position was tied to a  
25 particular grant.

D8Q6JOH4

Johnson - direct

1           THE COURT: Excuse me. Let's move on.

2           MS. MESIDOR: Your Honor, could I have permission to  
3 have the court reporter read back the last response?

4           THE COURT: Sure.

5           (Record read)

6 BY MS. MESIDOR:

7 Q. Ms. Johnson, I am going ask you as you are testifying to  
8 keep your voice elevated and slow down a little bit so the  
9 court reporter gets everything that you are saying, okay?

10 A. Yes.

11 Q. Now, you just indicated that your previous position at CWE  
12 was grant funded?

13 A. Yes.

14 Q. And during your time at CWE did you have knowledge if your  
15 position was grant funded?

16 A. Yes.

17 Q. At the time that you -- did there come a point in time when  
18 you were offered the position at STRIVE?

19 A. Yes.

20 Q. Who was your supervisor when you were first hired at  
21 STRIVE?

22 A. Initially it was Robert Carmona.

23 Q. What interactions, if any, did you have with Mr. Carmona  
24 toward the beginning of your employment?

25 THE COURT: I don't know what "interactions" mean.

D8Q6JOH4

Johnson - direct

1 You want conversations, ask for conversations or if you want  
2 something else, ask for something else.

3 Q. Ms. Johnson I am going to draw your attention to the  
4 first -- your first six months at STRIVE.

5 A. Okay.

6 Q. During your first six months at STRIVE, what conversations  
7 did you have with Mr. Carmona during that period of time?

8 A. Initially STRIVE was a great place to work. I was happy  
9 to --

10 THE COURT: These are conversations? Was that a sign  
11 on the door? In other words, just give us what you said to him  
12 and he said to you. Is that okay?

13 THE WITNESS: Okay.

14 THE COURT: In substance I am not suggesting verbatim.

15 THE WITNESS: Okay.

16 A. During the first week or two Mr. Carmona asked me to write  
17 an introduction for me to introduce myself to all of the  
18 affiliates. I provided -- I e-mailed Mr. Carmona my  
19 introduction. He revamped it and submitted it to all the  
20 affiliated 21 affiliates. One -- during the 30 to 45 days at  
21 STRIVE Mr. Carmona came to me at my desk and approached me at  
22 my desk, Yo, Brandi, I need to talk to you. Pardon me. I  
23 apologize. I got up. Followed Mr. Carmona into the conference  
24 room where he was yelling and screaming at me in an offensive  
25 tone in regards to a conversation he made me believe that he

D8Q6JOH4

Johnson - direct

1 had with Eric Treworgy who was at that time the CEO. He  
2 indicated that Eric had informed him that I told him something  
3 regards to two other staff members working at STRIVE, Emmanuel  
4 Pochecho and Maria Ortiz, and it was rumored that they was  
5 having a romantic relationship, which was against STRIVE  
6 policies and procedures. And the manner in which he was  
7 yelling and screaming at me I indicated that was in the  
8 conversation that Eric and I had. He told me I am the kind a  
9 woman who throw a woman under the bus, I had a sick way about  
10 myself. And I asked him to go get Eric, I wanted to clear it  
11 up. He said if Eric comes back in the conference room and the  
12 conversation is suggested he laid out I was going to be  
13 terminated on the spot. I asked him go get Eric. He left out  
14 the conference room, slammed the door. Came back 15 minutes  
15 later without Eric. He indicated that Eric said that is not  
16 the manner in which the conversation taking place that he  
17 didn't believe him.

18 I am sorry. He didn't believe him and if Eric was --  
19 excuse me my French -- Eric was an asshole I would have put  
20 Manny in the line of fire or something similar to that or  
21 possibly cause Emmanuel his job. He tells me if he ever hears  
22 anything like that about me or I will be terminated on the  
23 spot.

24 Q. Did there come a time when you tried to resolve the issue?

25 A. I did. I was very bothered. I never had a supervisor yell

D8Q6JOH4

Johnson - direct

1 and scream and curse at me like that especially if something  
2 that I never said or in the manner in which he believed it was  
3 presented to him. So I at the time Robert Carmona and Eric  
4 Treworgy was sharing an office. I went to the office and I  
5 asked Eric can I speak to him, and he told me, No, you fucking  
6 can't.

7 Q. Who said that to you?

8 A. Robert Carmona. I walked away, head down. Extremely  
9 bothered. I went and sat at my desk. I think I cried. I  
10 think I was crying. Eric came out of the office and said give  
11 him a couple minutes or something and he will talk to me and he  
12 came back later that day and we spoke. He indicated that was  
13 manner in which he would handle the situation. He didn't tell  
14 Rob -- he didn't say that to Rob and possibly I would be the  
15 one to put Rob in his place or put Rob in check or something  
16 like that and I said something why me. I didn't want to -- I  
17 just wanted to do my job.

18 Q. After that conversation with Mr. Treworgy when was the next  
19 time that you recall having a conversation with Mr. Carmona?

20 A. So it could have possibly been that week. I was quiet. I  
21 just wanted to do my job. I have seen Carmona blow up and I  
22 was the blunt of the blowing up and I didn't want to go through  
23 that again. I was quiet. I walked around the office possibly  
24 not speaking, just trying to work. He came past my desk and  
25 said something, not a verbatim, similar to I am walking around

D8Q6JOH4

Johnson - direct

1 here with my head down like I want some fucking attention just  
2 do my fucking job.

3 Q. Did you respond to Mr. Carmona when he said that to you?

4 A. I turned my back.

5 Q. Did you ever complain to anyone regarding that?

6 A. Eric.

7 Q. And when you say "Eric," do you mean Eric Treworgy the CEO?

8 A. Yes.

9 Q. What, if any, steps you are aware of did Mr. Treworgy take  
10 in response to your complaint?

11 MR. MINNAH-DONKOH: Objection.

12 THE COURT: If you know of your own personal knowledge  
13 I will take it.

14 A. I was -- Lisa Stein --

15 THE COURT: No. No. You have to know because of the  
16 conversation I suppose with Eric.

17 THE WITNESS: I assumed.

18 THE COURT: No. That will not help.

19 Q. Did Mr. Carmona continue to be your supervisor?

20 A. No.

21 Q. At what point did Mr. Carmona cease to be your supervisor?

22 A. After these incidents.

23 Q. Who became your supervisor after?

24 A. Lisa Stein.

25 Q. After Ms. Stein became your supervisor what conversation,

D8Q6JOH4

Johnson - direct

1 if any, do you recall having with Mr. Carmona?

2 A. I don't recall having any conversations at that point. I  
3 was relieved that he was not my supervisor.

4 Q. Does that cover the first six months of all the  
5 conversations you recall having?

6 A. Pretty much.

7 Q. Now I am going to call your attention to the next six  
8 months. Do you recall at that point -- now we're speaking  
9 about the period time after which Ms. Stein became your  
10 supervisor -- whether the six months after that whether you  
11 recall having any conversations with Mr. Carmona?

12 A. For the most part, yes. I tried to initiate a friendship  
13 or something. I just wanted Rob to leave me alone. I  
14 didn't -- I didn't say anything. I wanted Rob to leave me  
15 alone.

16 Q. When you tried to initiate a friendship, what do you mean  
17 by that?

18 A. I would go to him and ask for advise that I didn't  
19 necessarily need.

20 Q. Does that cover the conversations that you had with Mr. --  
21 are you all right?

22 A. I'm fine.

23 Q. Ms. Johnson, does that cover the conversations that you had  
24 with Mr. Carmona the first six months that Ms. Stein was your  
25 supervisor?

D8Q6JOH4

Johnson - direct

1 A. I can't give you an exact details. I just know it was a  
2 hostile place for me.

3 THE COURT: He wasn't your supervisor for these six  
4 months, right?

5 THE WITNESS: No. Rob Carmona was not my supervisor.

6 MS. MESIDOR: Ms. Johnson his Honor is offering you  
7 some tissue.

8 THE COURT: I want to see you, though, so push it this  
9 way a bit.

10 A. First six months. For the six months.

11 Q. After that period of time, did there come a time that you  
12 brought any issues or concerns to Mr. Carmona's attention?

13 A. Yes. I brought several issues to Mr. Carmona's attention  
14 in regard to how staff was feeling. I guess staff morale  
15 seemed low. We pulled people in the conference room and he  
16 indicated one -- he wanted to use the word loosely when his  
17 colleagues loosely informed him --

18 MR. MINNAH-DONKOH: Objection.

19 THE COURT: This conversation that you had with an  
20 individual or you are just telling us something you heard from  
21 Mr. Carmona or.

22 THE WITNESS: It was at a staff meeting. I had  
23 conversation with him.

24 THE COURT: We'll be glad to take your language.

25 A. He wanted to use the term loosely a colleague had informed

D8Q6JOH4

Johnson - direct

1 him, I guess, something regards to the staff wasn't happy. He  
2 made reference to we should just be -- the whole time the  
3 STRIVE has been in the black or red -- I guess some sort of  
4 financial term -- and none the staff has ever missed a paycheck  
5 especially with the economy where it was at. So he inferred  
6 that we should just --

7 MR. MINNAH-DONKOH: Objection.

8 THE COURT: We can only take what you think he said,  
9 but I assume you are telling us in substance this is what he  
10 said?

11 THE WITNESS: Yes.

12 THE COURT: Go ahead.

13 A. We should be happy to be getting our check. Some people  
14 don't have that. Some of the other nonprofits are not doing as  
15 well so I guess be grateful that we're getting paid.

16 Q. Did you ever bring any other concerns to Mr. Carmona?

17 A. I brought several to Mr. Carmona. I brought a concern to  
18 Precious. She was one the STRIVE participants.

19 Q. Okay. What is a participant?

20 A. A client. Precious was enrolled in the Greens training  
21 program, but part of my responsibility was to -- we had some --  
22 I apologize. One of the performance measures was to make sure  
23 that I believe it was 30 percent of woman participant and  
24 graduate from the Greens training program. So I spoke to Larry  
25 Jackson in regards to an all woman's support group because we

D8Q6JOH4

Johnson - direct

had something similar to that. So I -- I found a facilitator. I co-facilitated the group. Precious was part of the group. Precious has a barrage of issues, as a lot of our clients did. One day she called me and asked could she come talk --

MR. MINNAH-DONKOH: Objection.

THE COURT: Overruled.

A. She asked if she could come speak to me. I told her sure. I had no idea she was coming in that day. So she came in and this is right before the staff meeting and she indicated to me that one of the ex-trainers Angel Hill had made sexual passes at her or sexual advances toward her during the training. I brought that to Rob's attention. I asked him -- I didn't know what steps to take if any steps should be taken at all. I didn't know what my role would be. So I asked Rob to step into the conference room. I said we have a client Precious who indicated --

THE COURT: We don't need it twice. What did he say?

THE WITNESS: He said, Where is she? I said, She is at my desk. He told me to hold on. He went and got a senior director supportive services, Earnest Johnson. All three of us went back to my desk. Precious sat there. She gave her accounts of what happened. Both Carmona and Earnest Johnson seem disinterested.

THE COURT: How did they evidence their disinterest?

A. One of the questions was I believe -- I believe it was on

D8Q6JOH4

Johnson - direct

1 Ms. Earnest Johnson, Why are you telling us now? She indicated  
2 that he was still here and she was uncomfortable telling when  
3 he was here, but she just wanted to let us know now and Earnie  
4 asked, What do you want us to do? It was a nonchalant  
5 attitude.

6 THE COURT: I don't know what that means so I will  
7 strike the answer.

8 Q. In what way, if any, did Mr. Carmona exhibit a disinterest  
9 in the harassment complaint?

10 A. I believe they said, Well, if you want us to do -- if you  
11 want us to follow up with it, come back tomorrow or come back  
12 to write and we'll look into it. Both Rob and Earnie walked  
13 away. Precious sat at my desk and she was bothered. So it  
14 was -- it was almost at the close of day about 4:45, 4:30-ish.  
15 I told -- I got an e-mail, text message from Lisa Stein why did  
16 I not come to the meeting. I indicated to her that the young  
17 lady came to my desk while Earnie and Rob spoke to her and I  
18 wanted to make sure she was okay, but Rob and Earnie would have  
19 given her updates on it. The very next day Lisa Stein pulled  
20 me in the office and was disappointed in the manner in which I  
21 handled the situation. I didn't know how to handle the  
22 situation. I thought I was doing the appropriate thing. I was  
23 told not to counsel the participants because that was not in  
24 any job description. I didn't know. What should I have done?

25 Q. What, if any, subsequent conversations did you have with

D8Q6JOH4

Johnson - direct

1 Mr. Carmona regarding the complaint of the participant known as  
2 Precious?

3 A. After I spoke to Lisa, she told me it was a code yellow and  
4 not a code red and I need to use better judgment. I went back  
5 to my desk. Later on Rob came in and told me to walk with him  
6 and told me that I used poor judgment and I said and I  
7 indicated to him I think he -- I believe he said that I am  
8 allowed my own personal judgments to skew my judgment and  
9 Precious was ugly as shit and she -- she wasn't Angel's type,  
10 but she would have enjoyed it anyway or something like that.  
11 The next time I feel like using -- next time -- don't use --  
12 don't use my judgment wrong. Something about take my emotions  
13 out of it or stop being so emotional. I don't recall.

14 Q. During your time at STRIVE, did you ever have any visitors  
15 come to you?

16 A. Clients as well as family members, yes.

17 Q. Did there come a time where a visitor by the name of Dwayne  
18 Hubbard?

19 A. Yes. He was an ex-STRIVE employee.

20 Q. What, if anything, do you recall during your first two  
21 years at STRIVE occurred when Dwayne Hubbard came to see you?

22 A. The Dwayne Hubbard was a -- I don't know if I should say --  
23 to my knowledge he was an exemplary employee. He was the  
24 maintenance guy who moved up to a assistant in core training.  
25 Dwayne had started having family issues. Then Dwayne was a

D8Q6JOH4

Johnson - direct

1 STRIVE participant, but he had relapsed and he had job  
2 abandonment. STRIVE gave himself 30 days to get involved in a  
3 30-day in-patient or outpatient drug rehabilitation center.

4 I assisted Dwayne with on my off hours trying to  
5 secure him a bed in one of the rehab programs. I am sorry. It  
6 didn't work out. Dwayne didn't meet the requirements to secure  
7 his job so Dwayne came back to STRIVE. He didn't come see me.  
8 He came back to STRIVE, I guess, to see STRIVE. He didn't have  
9 an appointment is what I am saying. When he came back at my  
10 desk, it was during an audit. We was being audited by the  
11 Department of Labor.

12 A. He came back to to my desk. He cried. Gave him a hug. I  
13 apologized for his circumstances. Rob walked past and said,  
14 Yo, in my office. So Dwayne and I both looked at each other  
15 and I thought it was me. That is the normal manner in which  
16 Rob spoke to me.

17 I am sorry. Sorry. When he came out of Lisa's office  
18 he walked back and motioned for Dwayne to into his office. At  
19 that time Rob started yelling and screaming with Dwayne and he  
20 start a confrontation with Dwayne in a loud fashion. Both  
21 Lisa' office and -- Rob and Lisa's office were directly next to  
22 to each other so I was concerned about the auditor hearing that  
23 we had a staff member that was a drug addict and, you know,  
24 secured documents so I got up and closed Rob's door. Dwayne  
25 left out of the office. Let me see you for a minute.

D8Q6JOH4

Johnson - direct

1 Q. Who said that?

2 A. Rob to me. I got up went to see Rob. Danny was in this  
3 the office. Rob was getting his coat. He pointed in my face.  
4 If I would breathe, he was this close to my house.

5 Q. Let the record reflect that the witness put her hand in  
6 front of her face with a short distance between her nose and  
7 hand.

8 A. If I want my fucking door closed, I would have fucking  
9 closed it myself. I tried to explain to Rob we had an auditor  
10 there and he said, The problem with you is that you always  
11 coddling somebody. I wasn't trying to coddle. I was trying to  
12 keep the auditor from hearing the conversation. I tried to  
13 explain that to him. If I want my fucking door closed, I would  
14 have closed my fucking door. Lisa walked in and she walked  
15 out.

16 Q. When you say Lisa, are you referring to the defendant Lisa  
17 Stein?

18 A. Yes, I am.

19 Q. What was Ms. Stein's position at the company at the time?

20 A. She was human resources and CFO.

21 Q. What, if anything, did Ms. Stein do?

22 A. She left the office.

23 Q. Did there come a time that you complained to anyone about  
24 this incident?

25 A. That very day after the auditor had left, I went to Lisa's

D8Q6JOH4

Johnson - direct

1 office. I was crying and explained to her Rob yelled and  
2 screamed. I didn't explain to her you seen Rob yell and scream  
3 in my face and I explained to him why and she said, Well, you  
4 know, that is just Rob.

5 Q. Was there anything else said during that conversation?

6 A. She indicated that I needed to get tougher skin because  
7 that is just how -- that is who Rob is.

8 Q. So that is the first time that you complained to Ms. Stein?

9 A. No.

10 Q. To your knowledge, and I only want you to testify to what  
11 you personally know, did Ms. Stein ever take any action on any  
12 of your complaints?

13 A. Not to my knowledge.

14 Q. What, if anything, did you do in response to the inaction  
15 that was taking place in response to your complaints?

16 MR. MINNAH-DONKOH: Objection.

17 THE COURT: Overruled.

18 A. Can you repeat? I don't understand the question.

19 Q. Sure.

20 THE COURT: What did you do, if anything, as a  
21 response to this kind of conversation.

22 THE WITNESS: I didn't do anything. I felt defeated.  
23 What could I do? She was human resources person. Rob was the  
24 founder of the organization. I needed my job. What could i  
25 have done? Every time I complained, it went unheard. What

D8Q6JOH4

Johnson - direct

1 could I have done?

2 Q. Did there come a time when you began recording your  
3 conversations?

4 A. I did. After Rob pointed in my face, I went home and I  
5 told my partner that this guy is really nasty to me and he said  
6 it can't be that bad. It was a time when an employee from CWE  
7 came to STRIVE was inappropriately dressed. The office was in  
8 a buzz in regards to what her attire. I -- I didn't know what  
9 Rob seen what she had on. I had no clue, but I am sure he did  
10 call her. I was standing by the reception desk with clients as  
11 well as staff and Rob walked out and said, Yo, Brandi. You and  
12 Ms. Thomas, what is her name from CWE? Y'all just alike.  
13 Y'all just alike. And I was bothered because I didn't see  
14 myself coming to work with an inappropriate attire that  
15 Ms. Thomas had on or I didn't see myself as being like  
16 Ms. Thomas.

17 Q. What race is Ms. Thomas?

18 A. She is African-American.

19 Q. And did there come a time when you required of Mr. Carmona  
20 as to what he meant?

21 A. Yes. I waited because he told me, you know, check my  
22 emotions at the door from the last conversation. So I went  
23 home to think about it, came back the next door and I asked Rob  
24 and that is when I decided to tape the conversations. I didn't  
25 expect to get the nigger that he called me.

D8Q6JOH4

Johnson - direct

1 MS. MESIDOR: Your Honor, at this time plaintiff would  
2 like to play Exhibit 106, which is has already been admitted  
3 into evidence, which is the tape-recording that Ms. Johnson  
4 just testified to making.

5 THE COURT: Ladies and gentlemen, you should  
6 understand that the tape here has been admitted. It is the  
7 evidence in the case I believe, although I haven't heard it,  
8 that the plaintiff was going to also provide a transcript for  
9 each of you. The transcript is simply for you to follow along  
10 with. It is not the evidence in the case. It is just an aide.

11 MS. KREBS: Your Honor, we have not agreed or  
12 consented to the transcript.

13 THE COURT: I let it in. Isn't it on my exhibit list  
14 as admitted?

15 MS. MESIDOR: Yes, demonstrative.

16 THE COURT: Can you read in and out? I don't meant to  
17 say that disparagingly?

18 MS. KREBS: Your Honor, my --

19 THE COURT: I can't hear.

20 MS. KREBS: It was my understanding that there were  
21 concerns about the accuracy of the transcription.

22 THE COURT: If I let it in, those concerns are not  
23 obviously uppermost.

24 BY MS. MESIDOR:

25 Q. Ms. Johnson, before we hear what has been let into evidence

D8Q6JOH4

Johnson - direct

1 as Exhibit 106, do you remember what Ms. Thomas was wearing on  
2 the day in question?

3 A. Ms. Thomas was wearing a very short dress. She had on hot  
4 pink tights with these hot pink glitter shoes. It was very  
5 inappropriate for the office.

6 THE COURT: My chart by the way seems just for your  
7 information in case is incorrect. It says to be admitted by  
8 stipulation, which would have meant that you agreed or that is  
9 what stipulation means to me. Let's keep moving along.

10 MS. MESIDOR: We'll now play Exhibit 106.

11 (Audio played)

12 BY MS. MESIDOR:

13 Q. Ms. Johnson, is that the recording that you made of Mr.  
14 Carmona?

15 A. Yes.

16 THE COURT: Is there a date?

17 Q. Ms. Johnson do you recall when you made that recording of  
18 Mr. Carmona?

19 A. I don't have --

20 THE COURT: Do you put dates on these or when you gave  
21 them to you or when you took them or whatever happened?

22 MS. MESIDOR: Your Honor, March 14th, 2012. It is on  
23 the front cover of the transcript.

24 THE COURT: I have the front cover of the transcript.  
25 It is not on mine.

D8Q6JOH4

Johnson - direct

1 MS. MESIDOR: It says B. Johnson. Underneath it says  
2 2012 0314. Your Honor, if you look at end of the transcript it  
3 was done by a certified transcriber. There is a certificate in  
4 the back at the end also. They lifted it specifically from the  
5 files.

6 THE COURT: I don't know what that means, but it is  
7 okay. I see the front now. I can make out the numbers. So  
8 you are telling me it was March 14th, 2012. Is that what you  
9 are saying?

10 MS. MESIDOR: Your Honor, are you inquiring of me or  
11 the witness?

12 THE COURT: You.

13 MS. MESIDOR: Yes, your Honor.

14 BY MS. MESIDOR:

15 Q. Ms. Johnson, how did you feel after this conversation?

16 A. How did I feel after the conversation, or how do I feel  
17 now?

18 Q. How did you feel after the conversation with Mr. Carmona on  
19 or about March 14th, 1212?

20 A. I was offended. I was hurt. I felt degraded. I felt  
21 disrespected. I was embarrassed.

22 Q. Why were you embarrassed?

23 A. Because I should have said something other than I am  
24 offended. I should have did something else other than that?

25 THE COURT: Was there anybody else present?

D8Q6JOH4

Johnson - direct

1           THE WITNESS: Danny Gonzalez.

2           THE COURT: Was there in the room during the  
3 conversation?

4           THE WITNESS: Yes.

5           THE COURT: Who is she?

6           THE WITNESS: Danny Gonzalez is a consultant for  
7 STRIVE.

8 Q. Where did the conversation take place?

9 A. In Danny's office.

10 Q. I didn't hear?

11 A. In Rob and Danny's office.

12 Q. What, if anything, did you do immediately after the  
13 conversation with Mr. Carmona?

14 A. I gathered my dignity and tried to get out of that office  
15 before I started crying because he made it a point that I was  
16 too emotional and I was not going to allow this man to see me  
17 emotional or break down again. He wasn't going to get that  
18 from me. I got up. I left. I went to the bathroom. I  
19 started crying. Maria Ortiz came in the bathroom. I told her  
20 this man just called me a nigger and I cried.

21 Q. How long were you in the bathroom for?

22 A. About 45 minutes.

23 Q. Did there come a time when you left the bathroom?

24 A. Yes.

25 Q. What, if anything, did you do with the remainder of the

D8Q6JOH4

Johnson - direct

1 day?

2 A. I was bothered. I think I tried to go back to work. I  
3 really couldn't work. I felt ashamed. I went home, cried and  
4 went to sleep.

5 Q. Ms. Johnson, this conversation that you had with Mr.  
6 Carmona in which he indicated that you acted like a nigger,  
7 have you ever seen Mr. Carmona have similar conversations with  
8 other STRIVE employees?

9 A. I have never heard Rob call anyone else a nigger ever.

10 Q. Was the conversation that you had with Mr. Carmona  
11 characteristic of the other types of conversations that you  
12 had -- withdrawn.

13 Did you ever complain to anyone about this  
14 conversation with Mr. Carmona?

15 A. I didn't complain to anyone about the nigger conversation,  
16 no. I just told Maria. Why would I complain? Who want to  
17 help me thus far? Who would I complain to?

18 THE COURT: I think we got your drift.

19 Q. Did there come a time that you are aware of that STRIVE  
20 became aware of the complaint regarding the nigger  
21 conversation?

22 A. Yes. When they were served, the lawsuit. The complaint  
23 that I lodged against them, yes.

24 Q. And in that complaint did you detail the conversation that  
25 you had with Mr. Carmona?

D8Q6JOH4

Johnson - direct

1 A. Yes, I did.

2 Q. Did you also detail the conversation that you had with Mr.  
3 Carmona regarding the Dwayne Hubbard incident?

4 A. Yes, I did.

5 Q. What about the conversation that you had with Mr. Carmona  
6 regarding the Precious incident?

7 A. Yes, I did.

8 Q. And what, if anything, changed after you became aware  
9 that -- withdrawn.

10 How did you know that STRIVE was aware of that  
11 complaint?

12 A. Phil Weinberg pulled me in his office. Actually, no. The  
13 initial reaction I believe someone served them papers. One of  
14 the senior directors said, Oh, here we go with this shit again,  
15 and that is when I knew that it was me that was -- it was me,  
16 my complaint that was being served to them. Phil Weinberg  
17 pulled me in the office. I don't think it was that day. It  
18 could have been. I know Phil told me he got the complaint and  
19 he is going to look into it.

20 Q. Who is Mr. Weinberg?

21 A. Phil Weinberg was the new CEO.

22 Q. Is this Phil Weinberg the CEO at the time, is this the same  
23 Phil Weinberg that is an individual defendant in this case?

24 A. Yes.

25 Q. At the time you became aware that STRIVE knew about the

D8Q6JOH4

Johnson - direct

1 complaint what expectation, if any, did you have as to what  
2 would take place at that time?

3 A. I don't know. I expected it to stop, but it didn't. Rob  
4 became infuriated and I was made to pay.

5 Q. When you say that you were made to pay, what do you mean by  
6 that?

7 A. I was isolated. Rob had informed two of my coworkers that  
8 they were being used.

9 THE COURT: How do you know that?

10 THE WITNESS: It was taped.

11 THE COURT: Did they tell you that?

12 THE WITNESS: Yes. And Cami told Phil Weinberg as  
13 well.

14 THE COURT: I am interested in what they told you not  
15 what they told Phil.

16 THE WITNESS: Yes. Cami taped Rob and forwarded it to  
17 me a tape and I forwarded it to my lawyer.

18 THE COURT: I don't think you got my drift.

19 THE WITNESS: I am sorry.

20 THE COURT: What was it that was said to you?

21 THE WITNESS: Oh, Rob just -- Cammie and myself was  
22 having lunch. Rob walked passed and told them why was I there.  
23 Wrap it up. Wrap it up now. So naturally all three of us  
24 being females was extremely nervous, but I thought it was just  
25 me. So I gathered my stuff and tried to get over to my desk.

D8Q6JOH4

Johnson - direct

1 Cammie came back and told me come here. Rob just pulled me and  
2 Layette in the office and said Layette is going to meet me --

3 MR. MINNAH-DONKOH: Objection.

4 MS. MESIDOR: Your Honor, witness is replying to your  
5 Honor's question as to what was actually told her.

6 THE COURT: I think I probably can handle it.

7 MS. MESIDOR: I am sorry, your Honor.

8 THE COURT: Overruled. You can keep going with the  
9 very narrow question. What was said to you by Cammie and or  
10 the other lady.

11 THE WITNESS: Rob told them don't be used. This is  
12 what they told me, yes.

13 THE COURT: I only want what they told you.

14 THE WITNESS: Yes. Yes. This is what they told me.  
15 Don't allow themselves to be used. His anger is not at them.  
16 When he -- when Layette indicated that he reminded her that  
17 when she nodded off at her desk, there was no harm, no foul and  
18 told Manny and Manny sent her home so she could get some rest.  
19 That Phil, Lisa and others have told them that they have been  
20 doing a good job. Don't let this take away their good  
21 standings that they have at STRIVE.

22 THE COURT: I think that will do it for me. I am not  
23 sure were this -- we'll talk about that later.

24 BY MS. MESIDOR:

25 Q. During your conversation with Cammie, is that Cammie

D8Q6JOH4

Johnson - direct

1 Crawford?

2 A. Yes.

3 Q. When you say that you had a conversation with Layette, do  
4 you mean Layette Hall?

5 A. Yes.

6 Q. During your conversation with Cammie Crawford and Layette  
7 Hall, did they indicate to you -- withdrawn.

8           What, if anything, did you do after that conversation?

9 A. I went and spoke to Phil.

10 Q. What was that conversation?

11 A. I asked Phil -- I indicated -- I told Phil that Rob -- that  
12 we was eating at Cammie's desk with Layette and Cammie. Rob  
13 came and told them to wrap it. He told them not to be used.

14           THE COURT: We don't need to try this case two or  
15 three times since the discrimination aspect in my view is thin  
16 in my view. Let's not do it twice or three times.

17 Q. Ms. Johnson, what, if anything, did Mr. Weinberg say after  
18 you explained to him what happened?

19 A. He asked me to get Cammie.

20 Q. Did you do that?

21 A. Yes, I did.

22 Q. Did you return--

23 A. I returned with Cammie. Cammie, myself and Phil sat down  
24 and Cammie told Phil what happened. She also indicated to Phil  
25 she didn't understand that why it is always an issue with me.

D8Q6JOH4

Johnson - direct

1 Q. Did Ms. Crawford make the statement in your presence?

2 A. Yes, she did. She also told me that she is uncomfortable  
3 with Rob and Rob slams the door. She doesn't want Rob to know  
4 she came and told this and Phil told her she will won't be  
5 punished.

6 THE COURT: Where are we going here?

7 Q. After that conversation that you had with Mr. Weinberg,  
8 what, if any, actions -- withdrawn.

9 At the time that you had this conversation with  
10 Mr. Weinberg and Ms. Crawford, was Mr. Weinberg already aware  
11 of your complaint?

12 A. Yes.

13 Q. Going back to your statement that you felt that you were  
14 made to pay, what other examples, if any, do you have that you  
15 were made to pay after filing your complaint?

16 A. As a participant I helped -- I assisted. He came to see  
17 me. Rob told him not to come back and see me. Something is  
18 going on between myself and STRIVE and not to see me anymore.  
19 When I went to approach to tell Phil what had happened, Rob  
20 slammed the door on my face in front of Phil and Lisa. There  
21 was a time he -- Rob and Earnie was walking past my desk and he  
22 said, Put this bitch in a smash, and turned around and looked  
23 at me.

24 Q. What did you think that meant? How did you take that?

25 A. I took it as a theft.

D8Q6JOH4

Johnson - direct

1 Q. Did you make this -- all the examples that you just made, I  
2 am going to take them step by step. The slamming the door in  
3 the face, was Mr. Weinberg aware of that?

4 A. Mr. Weinberg and Ms. Stein was there, yes.

5 Q. Did they do anything to stop him?

6 A. No.

7 Q. Did they say anything?

8 A. No.

9 Q. Do you have any other examples?

10 A. I told you the slamming of the door in the face.

11 THE COURT: Let's not repeat what it is. Are there  
12 others? You can tell us others? If there are no others --

13 A. Besides the ones I indicated to you?

14 Q. Right. Aside from the ones you already indicated to me.

15 A. I was subsequently fired.

16 Q. When you say that you were subsequently fired, when did  
17 that take place?

18 A. June 11th. Mr. Weinberg had asked me to work from home.

19 He said he received a complaint that one of my visitors  
20 intimidated or made some of the staff that were uncomfortable.  
21 I questioned something as how that was possible as to our  
22 population is formerly incarcerated clients, disenfranchised  
23 clients. So I even inquired as to what was it about my family  
24 member's demeanor that made someone -- he said and it wasn't --  
25 he indicated to me it was not someone who lodged a complaint

D8Q6JOH4

Johnson - direct

1 that brought this attention but that was untrue.

2 Q. Who was it that brought to your knowledge that brought this  
3 complaint to Mr. Weinberg's attention?

4 A. Rob Carmona.

5 Q. Now, these incidents that you just described, the telling  
6 the participant not to see you and all these other examples  
7 that you gave what was the time frame between that and when you  
8 were terminated?

9 A. Weeks.

10 Q. During the period of time after your complaint, was there  
11 any change at STRIVE in terms of how you were treated?

12 A. Yes. It was a hostile work environment.

13 (Continued on next page)

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D81njoh5

Johnson - direct

1                   THE COURT: That is really a conclusion which I think  
2 we have at least six or eight people here to determine.

3                   THE WITNESS: Can I speak to how it made me feel or  
4 not? Sorry.

5 BY MS. MESIDOR:

6 Q. Ms. Johnson, at the time that you were fired, what, if  
7 anything, were you told?

8 A. The day I got fired?

9 Q. Yes.

10 A. Was the first time I was made aware that my position was  
11 attached to the Pathways grant and that they no longer had  
12 funding for my position.

13 Q. To your knowledge, were there other people whose positions  
14 were presumably tied to the Pathways Out of Poverty grant?

15 A. Yes, Christina Saenz, yes.

16 Q. And was Christina Saenz terminated?

17 A. No, she currently still works at STRIVE.

18 Q. When you were told that your position was linked to the  
19 Pathways Out of Poverty grant, who indicated that to you?

20 A. Phil Weinberg in front of Larry Jackson.

21 Q. Did you believe him when he said that?

22 A. No. No, I didn't believe him.

23 Q. Why?

24 A. Because that would be indicated to me at hiring.

25 Q. Did you know when the Pathways Out of Poverty grant was

D81njoh5

Johnson - direct

1 ending?

2 A. Initially the Pathways Out of Poverty grant was scheduled  
3 to end January 28 or 29 of 2012? Yes. However we put in for a  
4 no-cost extension. We never received word if we was approved.  
5 Lisa told me just continue to do my work in January as if we  
6 were approved. Don't worry about it.

7 Q. Did there come a time that you actually became notified  
8 that the extension was indeed approved?

9 A. I believe it was March or April.

10 Q. Between the period of time of when the grant was supposed  
11 to end and when you actually got notification that it was  
12 extended, how much time had elapsed?

13 A. Roughly three to four months approximately.

14 Q. During that three- or four-month period, did you continue  
15 to be paid?

16 A. Yes.

17 Q. Ms. Johnson, at the time that you were terminated from  
18 STRIVE, did Mr. Carmona continue to work with STRIVE?

19 A. Yes, he did.

20 Q. During the period of time that Mr. Carmona, during the  
21 period of time that you -- at the time that you were terminated  
22 at STRIVE, were you aware of Mr. Carmona's role changing in any  
23 way?

24 A. I'm sorry. I didn't hear what you said.

25 Q. At the time that you were terminated with STRIVE, did you

D81njoh5

Johnson - direct

1 ever become aware that Mr. Carmona's role at STRIVE had changed  
2 in any way?

3 A. No, Mr. Carmona, his role never changed. He was still the  
4 face of STRIVE. Mr. Carmona was just recently aired on CBS.

5 Q. You had previously indicated that Mr. Weinberg had  
6 represented to you that he was going to be investigating your  
7 claims?

8 A. Yes.

9 Q. During the course of Mr. Weinberg's purported  
10 investigation, were you ever asked to participate in that  
11 investigation?

12 A. Yes.

13 Q. What was your response to Mr. Weinberg when he asked you?

14 A. I told him I didn't have an issue with participating in the  
15 investigation. I just wanted my lawyer present.

16 Q. Did Mr. Weinberg ever follow up with you about asking you  
17 any questions in furtherance of his investigation?

18 A. He asked questions about, when I said I would like to have  
19 my lawyer present, I wasn't, there was -- I am not sure if  
20 there was any investigation going on.

21 Q. Were you ever approached to participate in the  
22 investigation after that conversation?

23 A. No.

24 Q. Were you ever given the results of that investigation?

25 A. No.

D81njoh5

Johnson - direct

1 Q. As you sit here today, do you know the results of that  
2 investigation?

3 A. No.

4 Q. Ms. Johnson, what effect, if any, has all that has  
5 transpired at STRIVE had on you?

6 A. I really can't put it into words.

7 Q. Try.

8 A. I am bothered. I am very bothered. More so with Phil  
9 because I've trusted him. I thought that he was going to come  
10 in here and evoke change and what he did was cover up  
11 everything I told him. Every time I lodged a complaint, he had  
12 an excuse for why Rob did what he did. It shakes your  
13 character, your person, you know, your being for someone to be,  
14 to call you a nigger and say like you low class.

15 THE COURT: I think the question is really what kind  
16 of emotional distress did you suffer, and how did it manifest  
17 itself?

18 THE WITNESS: It shook my self-esteem.

19 I wasn't always an effective parent to my kids because  
20 of this. There were times when I would laugh to keep from  
21 crying, times when I was in the house in my bed and didn't want  
22 to be bothered and had to muster up the energy to get myself  
23 together. The confidence when you go out on another interview  
24 are you going to be perceived as how these people perceive you.

25 Q. Did there come a time where you sought the help or any

D81njoh5

Johnson - direct

1 assistance regarding these issues that you were having?

2 MR. MINNAH-DONKOH: Objection.

3 THE COURT: Overruled.

4 A. Yes, I went to seek therapy. I sought help. Diane  
5 Schneider, my therapist, and Ethan Gorghaor.

6 Q. And for how long did you treat with Dr. Gorghaor and --

7 A. Mr. Gorghaor wasn't a long time. His --

8 THE COURT: How about the number of sessions.

9 THE WITNESS: OK. I seen, approximately three  
10 sessions with Gorghaor. His place was in his apartment, and I  
11 was uncomfortable with that.

12 Q. OK.

13 A. Dr. Schneider, twice a week for months. I don't --

14 Q. Do you recall when you started seeing Dr. Schneider?

15 A. I started seeing Dr. Schneider while I was employed at  
16 STRIVE.

17 Q. Do you know approximately when you were employed at STRIVE  
18 that you were seeing Dr. Schneider? For example, do you know  
19 whether it was toward the tail end of your employment, the  
20 beginning, the middle?

21 A. It was in 2012. Maybe February or March.

22 Q. And when did you stop seeing -- withdrawn. Do you continue  
23 to see Dr. Schneider to this day?

24 A. I do. I haven't seen her in about two or three months  
25 because she had some personal issue, but, yeah.

D81njoh5

Johnson - direct

1 Q. How often do you see Dr. Schneider when you do see her on a  
2 regular basis?

3 A. It depends on the week. It could be two times a week or  
4 once a week.

5 Q. Are you taking any medication?

6 A. Dr. Schneider gave me a referral to get prescription  
7 medication. I just don't want to be on prescription  
8 medication.

9 Q. Do you know the type of prescription medication that you  
10 were --

11 A. No.

12 Q. -- prescribed?

13 Ms. Johnson, did there come a time when you were able  
14 to find work?

15 A. Yes.

16 Q. When did you begin working?

17 A. January 7 of this year, 2013.

18 Q. Is it correct for me to say that between June 11, 2012 and  
19 January 2013 that you were unemployed?

20 A. Yes.

21 Q. Did you earn any salary at all during that period of time?

22 A. I received unemployment.

23 Q. Did you know how much money that you lost during that  
24 period of time?

25 MR. MINNAH-DONKOH: Objection.

D81njoh5

Johnson - direct

1                   THE COURT: Sustained.

2                   If you know the number, but she won't know the number.  
3 So it seems better if I sustain it then to have her not do  
4 anything but guess. If you have some documentation, maybe you  
5 can use that.

6                   MS. MESIDOR: May I inquire if she knows the number,  
7 your Honor?

8                   THE COURT: Sure.

9 A. I think it's close to \$40,000.

10 Q. Ms. Johnson --

11                  THE COURT: Close being like 30? 50?

12                  THE WITNESS: Close I think like 38,500.

13                  THE COURT: Do you have a piece of paper that supports  
14 that?

15                  THE WITNESS: I did the math, but I don't have it.

16                  THE COURT: That's the problem.

17                  THE WITNESS: Sorry.

18 BY MS. MESIDOR:

19 Q. How much do you earn in your current position?

20 A. \$50,000.

21 Q. Is that more or less than what you earned at STRIVE?

22 A. \$10,000 less.

23 Q. Where do you work now?

24 A. I work for Harlem United Black Men's Initiative.

25 Q. What do you do there?

D81njoh5

Johnson - direct

1 A. I am the program coordinator for YMSM and transgender,  
2 workforce development.

3 Q. Have you been consistently employed at Harlem United since  
4 obtaining the position in January 2013?

5 A. Yes.

6 MS. MESIDOR: Your Honor, if I could have just a  
7 moment to look over my notes. I believe I don't have anything  
8 further.

9 THE COURT: Sure.

10 MS. MESIDOR: May I, your Honor?

11 BY MS. MESIDOR:

12 Q. During your time at STRIVE, Ms. Johnson, were you ever  
13 given an employee handbook?

14 A. Yes.

15 Q. Does STRIVE have an antidiscrimination policy?

16 A. Yes, they do.

17 Q. Are you familiar with their antidiscrimination policy?

18 A. Yes, I am.

19 Q. Ms. Johnson, you were in the room before when defense  
20 counsel was doing their opening statement, and a reference was  
21 made to --

22 MR. MINNAH-DONKOH: Objection.

23 Q. -- the tough love --

24 MS. MESIDOR: The question is --

25 THE COURT: You think you ought to let her finish the

D81njoh5

Johnson - direct

1 question?

2 MR. MINNAH-DONKOH: Yes, your Honor.

3 THE COURT: Good. Me, too.

4 Q. Ms. Johnson, a reference was made to a sort of tough love  
5 culture at STRIVE. Are you aware of any such culture at  
6 STRIVE?

7 A. For the participants, yes.

8 Q. Is that a culture that is, based on your time at STRIVE and  
9 what you have observed, is that a culture that extends to staff  
10 members?

11 A. No.

12 Q. You previously described a conversation that Mr. Carmona  
13 was having with Mr. Hubbard that was in an aggressive manner.  
14 Do you recall that?

15 A. Yes.

16 Q. Was Mr. Hubbard a former participant at STRIVE?

17 A. Yes.

18 MS. MESIDOR: Your Honor, at this time, I would like  
19 Exhibit 33 that has previously been admitted into evidence -- I  
20 believe so I just want to confirm that, your Honor. I don't  
21 want to misrepresent.

22 THE COURT: That is a good idea.

23 MS. MESIDOR: Yes. That has been previously admitted.  
24 I would like to, if I can, approach the witness.

25 THE COURT: You may.

D81njoh5

Johnson - direct

1           I assumed you looked at my comments so we won't be  
2 talking about anything other than Chapter 5.

3           MS. MESIDOR: No, your Honor, we won't be.

4           THE COURT: I beg your pardon?

5           MS. MESIDOR: No, your Honor, we won't be discussing  
6 anything else besides that, your Honor.

7 BY MS. MESIDOR:

8 Q. Ms. Johnson, I am going bring your attention to Chapter 5  
9 of STRIVE East Harlem's employment service employee handbook on  
10 page 5.

11 A. OK.

12 Q. Do you have that before you?

13 A. Yes.

14 Q. Ms. Johnson, what is Chapter 5 of the STRIVE employee  
15 handbook regarding?

16 A. Employment opportunity and non-harassment policy.

17 Q. I am going to draw your attention to subsection 2 of the  
18 prohibited conduct?

19 A. OK.

20 Q. Ms. Johnson, I'm going to ask you to publish the first two  
21 sentences of that section under prohibited conduct to the jury,  
22 please? I am going to ask you to read slowly so that the court  
23 reporter can take down what it is that you are saying.

24           MR. MINNAH-DONKOH: Objection, your Honor. The  
25 document speaks for itself.

D81njoh5

Johnson - direct

1           THE COURT: It doesn't speak for itself if nobody  
2 knows what it says. You put it into evidence. I have no  
3 problem about your reading it.

4           Go right ahead.

5       A. "All forms of illegal discrimination, including  
6 discriminatory harassment are prohibited at the company.  
7 Conduct that creates a hostile work environment or that  
8 unreasonably interferes with an individual's work performance  
9 including sexual -- I'm sorry -- including racial, ethnic,  
10 religious, suggestive, or lewd remarks, sexual advances  
11 physical contact of a sexual nature, requests for sexual favors  
12 rewards for granting (or punishing for not granting) sexual  
13 favors, conditioning continued employment on the exchange of  
14 sexual favors or other verbal or physical conduct of a sexual  
15 nature including the display or viewing of sexually explicit,  
16 derogatory, or pornographic material by any means has no place  
17 at the company and will not be tolerated."

18           Continue?

19       Q. Yes.

20      A. "Harassment may include but not be limited to jokes, slurs,  
21 innuendos, sexually explicit or racially derogatory material in  
22 addition to commentary or conduct that would offend others on  
23 the basis of religion, race, creed, color, sex, sexual  
24 orientation, alienage or citizenship, national origin, age,  
25 marital status, handicap, disability, veteran status or any

D81njoh5

Johnson - direct

1 other protected feature or characteristic."

2 Q. That's all. Ms. Johnson, have you had an opportunity to  
3 read this employment handbook?

4 A. I skimmed through it.

5 Q. Based on what you have read in the employee handbook, is  
6 there anything in there regarding a culture of tough love at  
7 STRIVE?

8 THE COURT: Wait a minute. It is in evidence. If you  
9 want to pass it out to the jury, you could do that, but we  
10 won't let her go through it now since she only glanced at it to  
11 begin with and go look for what you are looking for. So move  
12 along, unless you're done, which is what I thought, so I could  
13 give the jury some time, a recess. But if not, let's finish.

14 Q. One last question.

15 THE COURT: It is all right with me. I just  
16 misunderstood you.

17 MS. MESIDOR: No. This was my last section of my  
18 direct examination, your Honor.

19 BY MS. MESIDOR:

20 Q. Ms. Johnson, the culture of tough love that was previously  
21 described, other than what you have already testified to in  
22 terms of seeing it with participants, has this tough love  
23 philosophy been used with any staff members at STRIVE?

24 A. No.

25 MR. MINNAH-DONKOH: Objection.

D81njoh5

Johnson - direct

1           THE COURT: It was asked and answered already. So we  
2 will strike it.

3           MS. MESIDOR: No further questions, your Honor.

4           THE COURT: Why don't we take ten minutes, everybody.  
5 We will see you at a quarter to 4 I guess you may step down  
6 after the jury passes before you.

7           MS. KREBS: Your Honor, I'm sorry, I just wanted to  
8 know, is there any indication of what time we are going to be  
9 ending today?

10          THE COURT: Not to my knowledge.

11          MS. KREBS: Can we get any indication of what time we  
12 might be ending today?

13          THE COURT: Would you like an indication of when we  
14 are ending today?

15          MS. KREBS: If you could give us one, your Honor, that  
16 would be great.

17          THE COURT: My guestimate is 5:30.

18          MS. KREBS: Thank you, your Honor.

19          (Recess)

20          THE COURT: Any cross?

21          MR. MINNAH-DONKOH: Yes, your Honor.

22          THE COURT: This is a good time.

23          CROSS EXAMINATION

24          BY MR. MINNAH-DONKOH:

25          Q. Good afternoon, Ms. Johnson?

D81njoh5

Johnson - cross

1 A. Good afternoon.

2 Q. Now, Ms. Johnson, this is the second time you and I are  
3 meeting, correct?

4 A. Yes.

5 Q. We first met during your deposition on May 22, 2013?

6 A. Yes.

7 Q. Now, Ms. Johnson, you would agree with me that STRIVE does  
8 a lot of good things for the community, correct?

9 A. Yes.

10 Q. STRIVE provides job training?

11 A. Yes.

12 Q. Provides counseling services?

13 A. Yes.

14 Q. Provides its participants, or clients, with jobs?

15 A. No.

16 Q. Is it your testimony that STRIVE does not look for jobs for  
17 its participants?

18 A. You said provide.

19 MS. MESIDOR: Objection.

20 A. Provide means that they give them jobs. Am I correct or am  
21 I wrong.

22 Q. I will withdraw that question and ask you this question.

23 A. All right.

24 Q. Isn't it true that STRIVE looks for job opportunities for  
25 its participants?

D81njoh5

Johnson - cross

1 A. Yes, it looks for jobs, yes.

2 Q. Isn't it true that STRIVE also hires some of its former  
3 participants?

4 A. Yes.

5 Q. So it does provide jobs for some of its participants,  
6 correct?

7 A. OK.

8 Q. Is that a yes?

9 A. Yes.

10 Q. OK. Now, your purpose in bringing this lawsuit is to bring  
11 STRIVE down because your employment was ended, correct?

12 A. Incorrect.

13 Q. Ms. Johnson, have you ever made comments in the workplace  
14 to the effect of, I'm going to bring this fucking organization  
15 down?

16 A. No, that was Angel Gaudio.

17 Q. Ms. Johnson, while you were employed at STRIVE, you did  
18 work with a lady by the name of Maxine Gelise, correct?

19 A. Yes.

20 Q. You also worked with a Virginia Barr, correct?

21 A. Yes.

22 Q. Is it your testimony that at no point in time while you  
23 were employed at STRIVE did you tell either Ms. Barr or Ms.  
24 Gelise that you were going to bring this fucking organization  
25 down?

D81njoh5

Johnson - cross

1 A. That is definitely my testimony. I never said that.

2 Q. So if they were to come to this courtroom to testify to  
3 that, are you saying both of them would be lying?

4 MS. MESIDOR: Objection. Calls for speculation.

5 THE COURT: I suppose. We'll strike it.

6 BY MR. MINNAH-DONKOH:

7 Q. Now, let's deal with the main issue or main component of  
8 your case, the use of the word nigga.

9 You have used the word nigga on several occasions  
10 while employed at STRIVE, correct?

11 A. Incorrect.

12 Q. Ms. Johnson, I remind you that you are under oath. You do  
13 understand that?

14 A. I know that. I know that I am under oath.

15 Q. It is your testimony that not once have you ever used the  
16 word nigga while employed at STRIVE?

17 MS. MESIDOR: Objection as to form. Is counsel  
18 implying that during --

19 THE COURT: Did you hear my instructions at the  
20 beginning of the meeting we had earlier today. The answer is  
21 yes. The ruling is overruled.

22 BY MR. MINNAH-DONKOH:

23 Q. Ms. Johnson, my question to you is, is it your testimony  
24 before this jury under oath that not once did you ever use the  
25 word nigga while employed at STRIVE?

D81njoh5

Johnson - cross

1                   THE COURT: That's asked and answered.

2                   I will sustain the objection to that question. Do you  
3 want to put a new question.

4 BY MR. MINNAH-DONKOH:

5 Q. Well, let me start off by asking this, Ms. Johnson. You  
6 testified that you were offended when Mr. Carmona used the word  
7 nigga during that conversation with you, correct?

8 A. Yes.

9 Q. So if you had used that word nigga before, that would be  
10 something that you would recall, correct?

11 MS. MESIDOR: Objection.

12 THE COURT: Overruled. We are not going too much  
13 further down this path.

14 Q. Is that a yes?

15 A. I don't know what you are referring to. Can you give me a  
16 better context.

17 Q. OK. I am going to say it very slowly.

18 A. Please.

19 Q. If you had ever used the word nigga in the workplace, since  
20 it is so offensive to you, you would remember it, correct?

21 A. I would remember it.

22 Q. Now, again, as you just testified, you were deposed this  
23 case on May 22, 2013, correct?

24 A. Yes.

25 Q. Your attorney, Ms. Sharpe, was present?

D81njoh5

Johnson - cross

1 A. Yes.

2 Q. I was present?

3 A. Yes, you were.

4 Q. I asked you questions throughout the day?

5 A. Yes, you did.

6 Q. Before you answered any of those questions, you took an  
7 oath to tell the truth?

8 A. Yes, I did.

9 Q. The same oath that you have taken here today?

10 A. Yes, sir.

11 Q. After your deposition, you had an opportunity to review  
12 your transcript?

13 A. Yes.

14 Q. For any errors in your testimony?

15 A. Yes. I have reviewed -- yes.

16 Q. Directing the Court's attention --

17 MR. MINNAH-DONKOH: And your Honor, I can provide you  
18 with a copy of transcript if you would like.

19 THE COURT: I would like.

20 Q. Directing the Court's attention to page 155 of

21 Ms. Johnson's May 22, 2013 deposition transcript, line 25:

22 "Q. OK. Ms. Johnson, during your tenure at STRIVE did you  
23 ever use the word nigga in your conversations with coworkers?

24 A. I don't recall."

25 Were you asked that question and did you give that

D81njoh5

Johnson - cross

1 answer?

2 A. Is it in the transcript?

3 Q. Yes. Would you like me to show it to you?

4 A. Yes, I would.

5 MR. MINNAH-DONKOH: May I approach the witness, your  
6 Honor?

7 THE COURT: You may.

8 MR. MINNAH-DONKOH: Moreover while Ms. Johnson looks  
9 at the transcript, would her attorney stipulate that I read  
10 that portion of the deposition transcript accurately?

11 MS. MESIDOR: No. I wasn't at the page when you read  
12 it, so I have no way of stipulating to that fact.

13 MR. MINNAH-DONKOH: You weren't reading?

14 MS. MESIDOR: No, when you began --

15 THE COURT: We are not having a conversation between  
16 lawyers. Do you have any reason to believe you didn't say  
17 that? I don't see the line.

18 What is the line that you are referring to?

19 MR. MINNAH-DONKOH: Line 25 to the next page.

20 THE COURT: The next page is, I see is 156.

21 MR. MINNAH-DONKOH: Yes.

22 THE COURT: OK. Did you make that answer to that  
23 question, Ms. Johnson?

24 THE WITNESS: OK, yes.

25 MR. MINNAH-DONKOH: OK. Thank you. May I have the

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Johnson - cross

1 transcript back, please?

2 THE COURT: I should explain to the jury what this is  
3 about, since there may be more of it, even if there isn't.

4 This is a form of impeachment called prior  
5 inconsistent statement. What it does is it points out to you  
6 sometimes an inconsistency between what the witness may have  
7 said at a previous time and what she said on the witness stand.

8 It is for you and you alone to determine whether or  
9 not that is impeachment of the witness's credibility.

10 Sometimes it is, and sometimes it is so minor it doesn't  
11 matter, but, in any event, the ball is in your court.

12 You may proceed.

13 MR. MINNAH-DONKOH: Thank you, your Honor.

14 BY MR. MINNAH-DONKOH:

15 Q. Now, Ms. Johnson let's talk about your employment with  
16 STRIVE, the beginning of your employment with STRIVE. As you  
17 testified to earlier, in order to become employed with STRIVE  
18 you were interviewed, correct?

19 A. Yes.

20 Q. You were specifically interviewed by three of STRIVE's  
21 executive staff, correct?

22 A. Yes.

23 MS. MESIDOR: Objection.

24 THE COURT: Overruled.

25 Q. One of those individuals who interviewed you was Eric

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Johnson - cross

1 Treworgy?

2 A. Yes.

3 Q. The then-CEO of STRIVE?

4 A. Yes.

5 Q. Lisa Stein also interviewed you, correct?

6 A. Yes.

7 Q. And Robert Carmona also interviewed you, correct?

8 A. Yes.

9 Q. You mentioned that you were interviewed twice?

10 THE COURT: You can move the podium forward, but it  
11 would be nice if you stood behind it, wherever it is you would  
12 like it to be.

13 MR. MINNAH-DONKOH: Sure, your Honor.

14 BY MR. MINNAH-DONKOH:

15 Q. You testified that you were interviewed on two separate  
16 occasions, correct?

17 A. Yes.

18 Q. Now, on that first occasion that you were interviewed you  
19 were interviewed by all three executive staff, correct?

20 A. Excuse me. Yes.

21 Q. Mr. Treworgy, Ms. Stein and Mr. Carmona, correct?

22 A. Yes.

23 Q. Now, that second interview that you had was not with any  
24 member of the executive staff, correct?

25 A. Correct.

D81njoh5

Johnson - cross

1 Q. And after that second interview you were offered the  
2 position of affiliate services coordinator, correct?

3 A. Yes.

4 Q. So we can agree that Mr. Treworgy, Ms. Stein and  
5 Mr. Carmona as the executive staff made the decision to hire  
6 you, correct?

7 MS. MESIDOR: Objection, your Honor.

8 THE COURT: Sustained.

9 Q. Well, this may seem like sort of a silly question but it is  
10 important that the jury gets to hear it. Ms. Johnson, at the  
11 time that you were hired by STRIVE you were still a woman,  
12 correct?

13 A. I believe so.

14 Q. Are you unsure?

15 A. It appears that you are unsure, yes.

16 Q. I am not unsure.

17 A. OK.

18 Q. OK.

19 A. Yes. I was still a female.

20 Q. OK. You were still black, correct?

21 A. Yes.

22 Q. You have brought this case alleging that Mr. Carmona did  
23 all these horrible things to you because you are a black  
24 female, correct?

25 MS. MESIDOR: Objection.

D81njoh5

Johnson - cross

1                   THE COURT: Overruled.

2 Q. Yes?

3 A. Oh, part of it, yes.

4 Q. But, again, Mr. Carmona was part of the executive team that  
5 interviewed you, correct?

6 A. And I got a high recommendation from Robert Medlock, his  
7 best friend, yes.

8 Q. Was Mr. Medlock an employee of STRIVE?

9 A. No, he was not.

10 Q. As a matter of fact, before you ever worked a day at  
11 STRIVE, Ms. Stein expressed her happiness to have you join  
12 STRIVE?

13 A. Yes. Yes, she did.

14 Q. In addition to Ms. Stein, Mr. Carmona also expressed his  
15 happiness to have you join STRIVE, correct?

16 A. I don't know about that.

17                   MR. MINNAH-DONKOH: Permission to approach the  
18 witness.

19                   THE COURT: Yes, indeed.

20 BY MR. MINNAH-DONKOH:

21 Q. Ms. Johnson I have shown you what has been marked for  
22 identification as Defendants' Exhibits U and F.

23 A. Yes.

24 Q. You recall receiving those e-mails, correct?

25 A. Yes.

D81njoh5

Johnson - cross

1 Q. Turning your attention to Exhibit U, that is an e-mail from  
2 Lisa Stein?

3 A. Yes.

4 Q. Dated April 23, 2010?

5 A. Yes.

6 Q. Your first day at work with STRIVE was May 3, 2010,  
7 correct?

8 A. Yes, I believe.

9 Q. Why don't you read for the jury what Lisa Stein said in  
10 that e-mail to you on April 232010?

11 A. "Hello, Brandi. We are so pleased to have you join our  
12 organization. We look forward to seeing you May 3. I will  
13 send you some program background next week."

14 MR. MINNAH-DONKOH: At this time, your Honor, we move  
15 Defendants' Exhibit U into evidence.

16 THE COURT: It is in evidence. Isn't it?

17 MR. MINNAH-DONKOH: OK.

18 Q. Turning your attention now to Defendant's Exhibit F --

19 THE COURT: All you do is have it identified. If it  
20 is in in my group that I gave you, it's in. If it's not in in  
21 my group, then it is out.

22 MR. MINNAH-DONKOH: Thank you, your Honor.

23 THE COURT: And it says so.

24 BY MR. MINNAH-DONKOH:

25 Q. Defendants' Exhibit F is an e-mail that Robert Carmona sent

D81njoh5

Johnson - cross

1 to you on May 4, 2010, correct -- or May 3 rather?

2 A. No -- yes, I'm sorry, yes.

3 Q. Just for clarification, he sent that e-mail on May 3, 2010?

4 A. May 4.

5 Q. May 4, 2010, OK.

6 In addition to sending that e-mail to you, Mr. Carmona  
7 sent it to STRIVE's affiliates?

8 A. Yes.

9 Q. Why don't you read that e-mail to the jury.

10 A. Can I give you some context before I read it?

11 Q. No. Please read it for the jury.

12 A. OK. Sure.

13 "To all colleagues, it is my pleasure to introduce  
14 STRIVE's affiliate services coordinator, Ms. Brandi Johnson.  
15 Previously Brandi worked with one of STRIVE's closest partner  
16 agencies in New York City, the Consortium for Worker Education.  
17 In her new capacity, Brandi will serve as a liaison between our  
18 respective organizations as well as our principal point of  
19 contact for issues related to labor green jobs initiative. She  
20 will be providing technical and programmatic support as needed  
21 and address any concerns that should manifest during the  
22 initiative. Brandi can be reached at 646-335-0817.

23 "Peace. Rob."

24 Q. Now, Ms. Johnson, we can agree that the terms "green jobs  
25 initiative" is what was commonly referred to at STRIVE as

D81njoh5

Johnson - cross

1 Pathways Out of Poverty?

2 A. Yes. Kind of.

3 Q. OK. We will get to that --

4 A. OK.

5 Q. -- in just a little bit.

6 In your role as affiliate services coordinator, one of  
7 your essential duties and responsibilities was to specifically  
8 monitor compliance with the Pathways Out of Poverty grant?

9 A. I was supposed to assist Moria Mendoza, who was the  
10 principal person for Pathways Out of Poverty.

11 Q. That was not my question, Ms. Johnson. My simple question  
12 to you is, one of your essential duties responsibilities was to  
13 monitor compliance with the grant?

14 A. Incorrect.

15 MR. MINNAH-DONKOH: Permission to approach the  
16 witness, your Honor?

17 THE COURT: Yes, indeed.

18 MR. MINNAH-DONKOH: Ms. Johnson I've just handed to  
19 you what is now in evidence as Defendants' Exhibit G.

20 THE COURT: Could you identify it for us, Ms. Johnson.

21 A. Yes. I'm sorry.

22 Q. That is a job description, correct?

23 A. Yes, it is.

24 Q. I want you to take a look at the first bullet point,  
25 towards the end of the second line.

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Johnson - cross

1               It states: "Specifically monitor compliance with  
2 Pathways Out of Poverty program requirements."

3               Is that a yes or no? Does it state that?

4 A. It states that, but I didn't receive this.

5 Q. OK. You claim you never received it, but I'm building up  
6 to what I ultimately want to ask you. Ms. Johnson, you did in  
7 fact manage that Pathways Out of Poverty grant?

8 A. After Moria Mendoza resigned, yes.

9 Q. So that -- is it your testimony that the first time you  
10 sort of became aware of the Pathways Out of Poverty grant was  
11 after Ms. Mendoza retired?

12 MS. MESIDOR: Objection.

13 THE COURT: Would you stand behind the podium.

14 Overruled.

15 A. No.

16 Q. When was the first time you learned about the Pathways Out  
17 of Poverty grant?

18 A. I believe one of the meetings that I had with Rob, Eric,  
19 Lisa and Ronelle.

20 Q. How soon after you had been working for STRIVE?

21 A. Was it two or three days?

22 Q. Are you sure about that?

23 A. I'm not sure of the time, but I'm sure that -- I recall  
24 being in a meeting in regards to -- and the Pathways Out of  
25 Poverty grant was mentioned, yes.

D81njoh5

Johnson - cross

1                   MR. MINNAH-DONKOH: Permission to approach the  
2 witness, your Honor.

3                   THE COURT: Yes, indeed.

4                   Do you have a date or anything? I asked her to  
5 identify it, but you kept on talking, so she didn't have a  
6 chance to do that. So one of you ought to tell me what it is.

7                   MR. MINNAH-DONKOH: Your Honor, the previous exhibit  
8 was a job description.

9                   THE COURT: Is there a date? Is it an e-mail? Did it  
10 come to her? Who wrote it? Maybe things like that. I have  
11 it, but it seems to me just for the record we ought to make  
12 sure everybody else has it.

13                  MR. MINNAH-DONKOH: Sure. Perhaps let me publish  
14 copies of the exhibit to the jury as well so the jury can  
15 follow along.

16                  THE COURT: Fine.

17                  Keep asking questions.

18                  MR. MINNAH-DONKOH: Sure.

19                  THE COURT: I gather I'm the guy that doesn't get one,  
20 right?

21                  MR. MINNAH-DONKOH: Going back to Defendants' Exhibit  
22 G, do you have it in front of you, Ms. Johnson?

23                  Ms. Johnson, on Defendants' Exhibit G, for "Job Title"  
24 it states "Affiliate Services Coordinator"?

25 A. Yes, but the department says --

D81njoh5

Johnson - cross

1 Q. It states "Affiliate Services Coordinator," correct?

2 A. Yes.

3 Q. And under department it says physical?

4 A. It says fiscal. I was part of the national team.

5 Q. At the time you were employed by STRIVE, were there any  
6 other affiliate services coordinators employed at STRIVE? Yes  
7 or no.

8 A. No, there was not.

9 Q. OK. Now, Ms. Johnson I have handed you a document before,  
10 a few minutes ago. Do you still have that document in front of  
11 you?

12 A. Which document?

13 MR. MINNAH-DONKOH: Permission to approach the  
14 witness.

15 THE COURT: All right.

16 A. These?

17 Q. No. OK. You didn't have it before. OK.

18 Ms. Johnson, I was previously asking you about when  
19 you first became aware of the Pathways Out of Poverty grant,  
20 and you testified that it was in a meeting approximately two or  
21 three days after you had been working with STRIVE. Yes?

22 A. Yes.

23 Q. Now, as part of your documents you had to submit to apply  
24 for STRIVE you submitted, as you've testified, were a résumé?

25 A. Yes.

D81njoh5

Johnson - cross

1 Q. An application?

2 A. Yes.

3 Q. At some point in time after you were hired or before you  
4 were hired you submitted a contact sheet?

5 A. After I was hired.

6 Q. That contact sheet listed individuals that should be  
7 contacted in case of emergency?

8 A. Yes.

9 Q. You filled out that contact sheet yourself?

10 A. No.

11 Q. Who filled out that contact sheet?

12 A. I had assistance from Crystal Batista.

13 Q. What did Crystal Batista assist you?

14 A. With the department, which department should go on  
15 emergency contact. And I didn't get this on May 3. I got this  
16 maybe a week after I started at STRIVE.

17 Q. Well, you just testified that you prepared that document  
18 with Crystal Batista's assistance.

19 A. Yes.

20 Q. You filled out this document with Crystal Batista  
21 allegedly? Yes?

22 A. Yes.

23 Q. And that document is dated May 3, 2010?

24 MS. MESIDOR: Objection, your Honor. Plaintiff's  
25 counsel still does not know what document he's referring to.

D81njoh5

Johnson - cross

1 There's been no exhibit listed on the record as to what  
2 document we are supposed to be looking at.

3 THE COURT: Do you want to rephrase the question?

4 MR. MINNAH-DONKOH: Sure.

5 BY MR. MINNAH-DONKOH:

6 Q. You filled out that contact sheet with Crystal Batista on  
7 May 3, 2010. Yes?

8 A. No.

9 MS. MESIDOR: Objection, your Honor.

10 Which exhibit are we looking at, if counsel could  
11 please tell me which exhibit he's looking at so I can follow  
12 along with the testimony.

13 MR. MINNAH-DONKOH: I will give you a copy.

14 MS. MESIDOR: Which exhibit for the record, please.

15 MR. MINNAH-DONKOH: Just give me one second and I will  
16 get that for you. That was Defendant's Exhibit DD.

17 THE COURT: What are we waiting for?

18 BY MR. MINNAH-DONKOH:

19 Q. For the portion of Defendants' Exhibit DD that states  
20 department, it states Pathways Out of Poverty?

21 A. It does.

22 Q. That document is dated May 3, 2010?

23 A. It was backdated.

24 Q. It's dated May 3. That is your testimony, but it's dated  
25 May 3, 2010. Yes?

D81njoh5

Johnson - cross

1 A. Actually, if you look, I put an initial by there. I was  
2 going to put the original date, and I was told to put the  
3 backdate, so if you tell me which date.

4 Q. Ms. Johnson, all I am asking you, yes or no, the date on  
5 here is May 3, 2010. Yes? Yes?

6 A. Yes.

7 MR. MINNAH-DONKOH: May I publish this.

8 THE COURT: No, did you read the exhibit list. I  
9 can't believe that we have to go through this. I spend the  
10 time making a decision with respect to hundreds of exhibits. I  
11 give you a list with respect to each admission and each denial  
12 of an admissible document. You are unable to even look at the  
13 list to see whether DD is in or out of evidence. It is, if you  
14 look, out.

15 MR. MINNAH-DONKOH: Understood, your Honor. I was  
16 using it for impeachment purposes.

17 THE COURT: Yes. But unfortunately it doesn't do much  
18 on that score, like nothing.

19 BY MR. MINNAH-DONKOH:

20 Q. Now, Ms. Johnson, while you were employed at STRIVE, you  
21 did have several performance issues which were pointed out to  
22 you?

23 A. No.

24 Q. At no point in time while you were employed at STRIVE were  
25 performance issues pointed out to you?

D81njoh5

Johnson - cross

1 A. What do you mean by performance issues pointed out? Can  
2 you give me an example, please.

3 Q. Sure. About how you interacted with your colleagues and  
4 supervisors?

5 A. I had an issue -- it was a confrontation regarding one  
6 colleague, yes.

7 Q. As well as your workplace attire?

8 A. Um --

9 MS. MESIDOR: Objection, your Honor.

10 Is there a question there?

11 THE COURT: What?

12 MS. MESIDOR: He said, As well as your workplace  
13 attire. I didn't hear a question.

14 THE COURT: I will allow it. Ms. Mesidor, I think you  
15 ought to understand that this is cross-examination. I permit  
16 very broad cross-examination. So when you object, please be  
17 sure that you know what you are doing. Good. We'll do better  
18 that way.

19 BY MR. MINNAH-DONKOH:

20 Q. You were counseled about your workplace attire while  
21 employed by STRIVE?

22 A. No, I was never counseled about my workplace attire.

23 Q. Conversations were had with you about inappropriate  
24 workplace attire?

25 A. One conversation.

D81njoh5

Johnson - cross

1 Q. Is it your testimony that there was only one conversation  
2 about your workplace attire?

3 A. I was one formal conversation between Rob, and he brought  
4 April in and Lisa Stein. On -- it was a dress down Friday. He  
5 came at sat at my desk and said something in regards to my red  
6 shoes, yes, but it was not my attire. It was my red shoes.

7 Q. You also mentioned a conversation that Robert Carmona had  
8 with you about your dress. Yes?

9 A. Yes.

10 Q. And he actually had a meeting with you in his office?

11 A. Yes, he yelled for me to come in his office. He did.

12 Q. The two of you weren't alone in his office --

13 A. No.

14 Q. Let me finish my question. The two of you were not alone  
15 in his office when he had that conversation with you.

16 A. No. He motioned for April to come as well.

17 Q. April Bland is a high-level employee at STRIVE?

18 A. Yes.

19 Q. And she is a black woman?

20 A. Yes, she is.

21 Q. Is it your understanding that Mr. Carmona brought Ms. Bland  
22 into that meeting so that anything he says to you could not be  
23 misconstrued at any time later on?

24 MS. MESIDOR: Objection, your Honor.

25 THE COURT: Sustained.

D81njoh5

Johnson - cross

1 BY MR. MINNAH-DONKOH:

2 Q. Well, during that meeting in Mr. Carmona's office, he told  
3 you that your dress for that particular day was inappropriate  
4 for the workplace, didn't he?

5 A. He did say something similar to that, and I questioned his  
6 judgment. Because I had on a blazer, so I didn't understand  
7 what he was referring to. How could he possibly see my dress  
8 if my dress was covered up.

9 Q. Well, you do plan on calling Ms. April Bland as a witness  
10 during this trial? Yes?

11 A. I don't know --

12 MS. MESIDOR: Objection.

13 A. -- who my attorney is going to call as a witness, sir.

14 Q. While you were employed at STRIVE, you were given  
15 performance evaluations?

16 A. Yes.

17 Q. After you were given a performance evaluation, you were sat  
18 down and a conversation was had about the written evaluation?

19 A. Yes.

20 Q. Lisa Stein would sit with you or sat with you on at least  
21 one occasion?

22 A. Yes, she did.

23 Q. Permission to approach the witness?

24 THE COURT: Very well.

25 Q. Ms. Johnson, I have handed you what has been marked for

D81njoh5

Johnson - cross

1 identification as Defendants' Exhibit J. Ms. Johnson,  
2 Defendants' Exhibit J, that is a performance evaluation that  
3 was given to you on October 21, 2011, yes?

4 A. Yes.

5 Q. It was prepared by Lisa Stein?

6 A. I assume so.

7 Q. Well it states in the document on the first page that it  
8 was prepared by Lisa Stein, yes?

9 A. Yes.

10 (Continued on next page)

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Johnson - Minnah-Donkoh

1 BY MR. MINNAH-DONKOH:

2 Q. And if you turn to the Bates number or page 36 of that  
3 document, are you with me?

4 A. Yes, I am, sir.

5 Q. Do you see where it says number seven interpersonal  
6 relations teamwork?

7 A. Yes.

8 Q. Why don't you read for us what Ms. Stein said?

9 A. Read the number as well attached to it?

10 Q. No. Just the portion in italics.

11 A. Brandi shows compassion and personal interest in her  
12 colleagues. However, I have had several conversations with  
13 Brandi regarding her communications to colleagues and  
14 management. She is often confrontational and emotional in her  
15 initial reaction towards situation where she had difference in  
16 opinion. She has not been able to demonstrate improvement in  
17 this capacity.

18 She gave me a 2.5, which is above average.

19 MR. MINNAH-DONKOH: Move to strike that portion. It  
20 is nonresponsive.

21 THE COURT: It is not part of the exhibit. I don't  
22 have it in front of me.

23 MS. MESIDOR: It is in the exhibit.

24 THE COURT: It is what he asked you to read?

25 THE WITNESS: Yes. I read it.

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Johnson - Minnah-Donkoh

1                   MR. MINNAH-DONKOH: Permission to publish it to the  
2 jury, your Honor.

3                   THE COURT: Very well.

4 BY MR. MINNAH-DONKOH:

5 Q. Again, Ms. Johnson, that portion you read for us was on  
6 your evaluation on the 7th, yes?

7 A. Yes.

8 Q. I now want you to turn to the last page of that document.  
9 Do you see where it says, Less any areas where the employee  
10 should improve effectiveness on the job?

11 A. Yes.

12 Q. Why don't you read that into the record?

13 A. Brandi must work on her communication style as identified  
14 in her as identified in this evaluation. It continues to be a  
15 hinderance to her professional growth and development here at  
16 STRIVE. Furthermore, Brandi must improve both her attendance  
17 and ability to separate personal issues from workplace  
18 presence. This will go along way to improving her  
19 dependability and consistency.

20 Q. Now, going back to the third page, number seven, which you  
21 read for us before where you got a 2.5.

22 A. Yes.

23 Q. You testified that that was above average?

24 A. Yes.

25 Q. If you go to the second page of the exhibit, the top of the

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Johnson - Minnah-Donkoh

1 page says a three rating mean expectations?

2 A. Yes. Three says expectations.

3 Q. Two says needs improvement?

4 A. Yes. Two needs improvement.

5 Q. So two is not above average, is it?

6 A. It meets them but not all.

7 Q. Now, just a few months after Ms. Stein in your  
8 October 21st, 2011 performance evaluation advised you to  
9 improve your communications with your colleagues and your  
10 supervisors, you had an altercation with a coworkers Christina  
11 Saenz?

12 A. What do you mean by altercation? I take altercation  
13 meaning something physical.

14 Q. You had a verbal altercation with Christina Saenz?

15 A. No, I did not.

16 Q. That was not an incident between you --

17 A. There was.

18 THE COURT: Can you wait until he finishes your  
19 question.

20 THE WITNESS: I am sorry.

21 Q. There was an incident between you and Christina Saenz just  
22 approximately two months after Ms. Stein advised you to improve  
23 your communications with colleagues and supervisors, yes?

24 A. There was an incident.

25 Q. And Mr. Carmona was made aware of that incident between you

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Johnson - Minnah-Donkoh

1 and Ms. Saenz, yes?

2 A. I believe so.

3 Q. By the way Ms. Saenz her race is Hispanic?

4 A. I don't know what Christina's race is.

5 Q. Have you ever testified before that she was Hispanic?

6 A. I probably did, but I don't recall. I don't know if it is  
7 what her race is. She could be Hispanic.

8 Q. Let me direct your attention again to your May 22nd, 2013  
9 deposition. Page 148, line 15:

10 "Q. What is Christina Saenz's race?

11 "A. Hispanic."

12 A. Okay.

13 Q. During your deposition you never testified that you were  
14 unsure about her race, did you?

15 A. I don't believe so, no.

16 Q. I just read it for you, right?

17 A. Did you.

18 Q. Yes.

19 A. Okay.

20 MR. MINNAH-DONKOH: Permission to approach the  
21 witness?

22 THE COURT: Very well.

23 MR. MINNAH-DONKOH: As well as publish Defendant's  
24 Exhibit K to the jury?

25 Q. Now, Ms. Johnson, Defense Exhibit K in evidence is an

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Johnson - Minnah-Donkoh

1 e-mail that you received from Robert Carmona on December 28th,  
2 2011, yes?

3 A. I don't recall Rob's e-mail but I recall Lisa's.

4 Q. Do you see the two subjects at the top?

5 A. I see the two subjects, sir. I didn't -- I don't see Rob's  
6 e-mail. I do remember seeing Lisa's.

7 Q. Let me just finish up this line of questioning. Your name  
8 appears in two subjects of Defendant's Exhibit K, does it not?

9 A. Yes, it does.

10 Q. And in this e-mail Robert Carmona was talking about the  
11 incident that you quoted between yourself and Christina Saenz?

12 A. This is not the incident that I was referring to, sir.

13 Q. So is that another incident between yourself and Christina  
14 Saenz?

15 A. No. Christina and I didn't have an incident when Rob had a  
16 meeting with myself and Christina. It wasn't an incident.

17 Q. Why don't you read into the record what Defense Exhibit K  
18 says. The top portion?

19 A. After reading Lisa e-mails, both of you engendered just  
20 adverse --

21 THE COURT: It engendered, right?

22 A. The communication was balanced and did not single out or  
23 lay blame on either of you. To reiterate our last conversation  
24 both of you bring different value to our work, but those values  
25 have to operate in tandem. You are both changed -- you both

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Johnson - Minnah-Donkoh

1 charged with responsibilities that entail work communication  
2 with our affiliate colleagues in as representatives of the  
3 national office you guys have to present unified -- to present  
4 a unified front. The mid to long term intent with the new CEO  
5 is to energize affiliate relations and both of you are a big  
6 part that. Additionally you guys are going to be taking the  
7 show on the road in the very near future. Let's not lose the  
8 fight but our sight on the larger issue.

9 Q. Now this e-mail appears to discuss a difference or  
10 difference in between you and Christina Saenz?

11 A. No. Yes.

12 Q. Yes. Okay. You would agree based on the substance of  
13 Rob's e-mail that he was treating you and Christina Saenz who  
14 is Hispanic equally?

15 A. Am I to -- I don't understand the question. I am sorry. I  
16 don't see this as being --

17 Q. Let me ask you this: Did he place blame on you over  
18 Christina Saenz?

19 A. No, he did not.

20 Q. Again, this e-mail was sent just two months after your  
21 October 21st, 2011 performance evaluation?

22 A. Yes.

23 Q. By the way, Ms. Johnson, I want to go back to your  
24 performance evaluation, which is Defendant's Exhibit J.

25 A. Okay.

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Johnson - Minnah-Donkoh

1 Q. Do you see the last page?

2 A. Yes.

3 Q. Section E, employee comments. It states, After you have  
4 reviewed and discussed this evaluation with your supervisor  
5 please state your comments regarding this evaluation. You may  
6 use additional paper. If you have no comment, please state  
7 none.

8                  You never wrote any comments to this evaluation, did  
9 you?

10 A. I also never wrote "none" either.

11 Q. So that is a no, you never did?

12 A. I never responded.

13 Q. It is a yes or no?

14 A. Sir, it is not a yes or no.

15 Q. Ms. Johnson, listen to my question very carefully. Yes or  
16 no you never submitted any employee comments to your  
17 October 21st, 2011 performance evaluation?

18 A. And I never wrote neither either.

19 Q. That was not my question. Do you not understand my  
20 question? It is a very simple question.

21                  MS. MESIDOR: Objection, your Honor.

22                  THE COURT: Overruled.

23 A. I understand your question. I just think it is more  
24 complex than that.

25 Q. Now, so after your October 21st, 2011 performance

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Johnson - Minnah-Donkoh

1 evaluation as well as an e-mail from yourself to Robert Carmona  
2 in December of 2011, there was an incident with you and  
3 Christina Saenz in January of 2012, yes?

4 A. I believe so.

5 Q. When you say you believe so, what leads you to not really  
6 recall?

7 A. Since time has passed if you can show me some information  
8 for I don't recall the dates -- the date.

9 Q. But you would agree that after your performance evaluation  
10 in October 2011 as well as the e-mail from Robert Carmona in  
11 December 2011 there was an incident between you and Christina  
12 Saenz?

13 THE COURT: Sustained. Asked and answered.

14 MR. MINNAH-DONKOH: Permission to approach the  
15 witness?

16 THE COURT: Sure.

17 MR. MINNAH-DONKOH: Your Honor, I am also going to  
18 publish what is already in evidence as Defendant's Exhibit L to  
19 the jury.

20 THE COURT: At the end of the day, ladies and  
21 gentlemen, you can just put the exhibits that are being passed  
22 out to you on your seat and they should be there tomorrow  
23 morning.

24 BY MR. MINNAH-DONKOH:

25 Q. Ms. Johnson, if you take a look at the first page of

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Johnson - Minnah-Donkoh

1 Defendant's Exhibit L, that is a letter or memorandum that Lisa  
2 Stein provided you with on January 27, 2012, yes?

3 A. Yes. She gave this to me and Christina, yes.

4 Q. And that letter it states, There have been previous  
5 incidents of you not getting along with your colleague  
6 Christina Saenz. These incidents involve excessive drama,  
7 involving other staff members and obstructed your ability to  
8 perform your essential job duties. Up until this point there  
9 have been numerous discussions and assistance help you both to  
10 move through these conflicts where you can work through work  
11 schedule. Prior to the holidays you indicated to me that you  
12 had met together with Christina Saenz and made a resolution to  
13 move forward and work better together in 2012.

14 However, on January 25th there was another incident  
15 that demonstrated a continued inability to meet this status  
16 quo. Therefore, you are being given a written warning. It is  
17 essential to work respectfully and professionally with your  
18 colleague in order to successfully carry out your job  
19 functions. Unwillingness or in ability to do so will lead to  
20 further disciplinary action up to and including termination.

21 The following page provides a clear destruction and it  
22 is expectation of how you are to proceed in this regard.  
23 Furthermore, specific professional development areas were  
24 identified in your performance evaluation dated October 21st,  
25 2011. Further expectations addressing these are also

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Johnson - Minnah-Donkoh

1 identified on the following page.

2 You did receive this document?

3 A. Yes, I did.

4 Q. You also testified that Christina Saenz received the same  
5 document, yes?

6 A. Yes, I did.

7 Q. So you would agree with me that Christina Saenz who is  
8 Hispanic, not black was treated the same way that you were in  
9 this particular incident?

10 A. I would agree with you with that.

11 Q. She was given the same corrective action?

12 A. She was. Christina and I was not the one who was initial  
13 conversation. It was Nancy Grant and Christina. That is what  
14 Nancy Grant indicated to Lisa. I was brought in on the latter  
15 part of this conversation.

16 Q. In addition to Christina Saenz, Ms. Johnson, you also had  
17 an argument with Layette Hall?

18 A. When did I have an argument with Layette?

19 Q. You don't recall having an argument with Layette where you  
20 told her in sum and substance, Why don't you go find your  
21 baby's daddy?

22 A. I could have said that to Layette.

23 Q. And when you quote/unquote could have said that to Layette,  
24 there were student interns present in that incident?

25 A. No. That is incorrect.

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Johnson - Minnah-Donkoh

1 Q. So if a STRIVE employee who was present during that  
2 particular incident were to testify that there were in fact  
3 student interns present during this incident, it is your  
4 testimony that that individual would belying?

5 MS. MESIDOR: Objection, your Honor.

6 THE COURT: Overruled.

7 A. I don't know. I can't testify to what someone else may  
8 say. So I don't know.

9 Q. That was not the question?

10 A. Can you repeat the question?

11 Q. Sure. You testified that there were no student interns  
12 when you quote/unquote could have told Layette Hall that why  
13 don't she go find her baby's daddy?

14 A. I --

15 Q. Ms. Johnson, you testified to that.

16 My following question was to you was: Isn't it there  
17 were student interns present and you answered no.

18 A. So let me take that back. I don't recall there being  
19 anyone. I have no recollection. I apologize. I don't recall  
20 that.

21 Q. You would now like to testify to you don't recall?

22 A. I am not changing my testimony. I don't recall student  
23 interns being there. I don't recall that. That was an  
24 incident after my brother died that Layette started saying he  
25 wasn't my brother.

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Johnson - Minnah-Donkoh

1                   MR. MINNAH-DONKOH: Your Honor, move to strike her  
2 testimony. That is nonresponsive.

3                   THE COURT: Stricken.

4 Q. Ms. Johnson, the fact of the matter is your employment at  
5 STRIVE was not the first time you had been admonished about  
6 your inactions with coworkers?

7 A. Sir, I am not here for --

8 Q. Ms. Johnson, you have to answer my questions. You answered  
9 all of your attorney's questions. I ask that you answer my  
10 question again.

11                  The fact of the matter is your employment at STRIVE  
12 was not the first time you had been admonished about the way  
13 you interacted with staff and supervisors?

14                  MS. MESIDOR: Objection.

15                  THE COURT: Overruled.

16 A. Um --

17                  THE COURT: It is a yes or no question.

18 A. No, it is not the first time.

19 Q. As a matter of fact prior to working for STRIVE you worked  
20 for an employer by the name of Carmisky?

21 A. Yes.

22 Q. And you were terminated from Carmisky for getting into an  
23 argument with your boss, yes?

24 A. I wasn't terminated for the argument, but I was terminated,  
25 yes.

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Johnson - Minnah-Donkoh

1 Q. I am not sure if I heard you right. So I am going to ask  
2 or repeat your testimony again. Is it your testimony that you  
3 were not terminated from Carmisky because of an argument you  
4 with your boss?

5 A. It was not an argument. It was a disagreement. I wasn't  
6 terminated. I was told --

7 Q. Ms. Johnson, I am going read from your May 22nd, 2013  
8 deposition again.

9 A. Okay.

10 THE COURT: Your job, whether he asks you or not after  
11 he finishes reading, is to tell us if you made those answers to  
12 those questions. Understood?

13 THE WITNESS: Yes, sir.

14 Q. Now, Ms. Johnson, just for clarification your deposition  
15 testimony was just three months ago approximately, yes, in May?

16 A. Yes.

17 MR. MINNAH-DONKOH: Directing the Court's attention to  
18 69, line 11.

19 Q.

20 "Q. Why did your employment with Carmisky.com come to an end?

21 "A. I was terminated.

22 "Q. What were you terminated for?

23 "A. Arguing with my supervisor."

24 You were asked those questions and you did give those  
25 answers?

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Johnson - Minnah-Donkoh

1 A. I gave more context to the conversation. Do you have that  
2 recorded?

3 Q. Were you asked those questions and did you give the answer,  
4 yes?

5 A. Yes, I did. Can you also give the rest of the context?

6 MR. MINNAH-DONKOH: Your attorney is free --

7 THE COURT: No, you do it now. We are not doing it in  
8 pieces assuming you know what she is talking about. Maybe your  
9 attorney can tell us what you are talking about or maybe you  
10 can.

11 Do you have a transcript in front of you?

12 THE WITNESS: No, sir.

13 THE COURT: Here is a transcript and here is page 69.  
14 Tell us what it is you are referring to and let me read it  
15 before anybody else does and then we'll decide what to do with  
16 it. It may be on another page.

17 MS. MESIDOR: Your Honor, if I may. I believe the  
18 testimony that the witness may be looking for is on page 70.

19 THE COURT: She is moving right in that direction.

20 You got 70 now, Ms. Johnson?

21 THE WITNESS: Yes.

22 THE COURT: Do you see what your lawyer suggests that  
23 is where you will find it.

24 THE WITNESS: Okay.

25 THE COURT: Do you have it?

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Johnson - Minnah-Donkoh

1           THE WITNESS: Yes.

2           THE COURT: Tell us the line numbers and give it back.  
3 The whole page? Let's read line 1 through line 10, which is  
4 what I think she is talking about.

5           MR. MINNAH-DONKOH: Perhaps, your Honor, I should page  
6 69, line 24?

7           THE COURT: Not for me, but if you think that is more  
8 in context that is wonderful and you should do it.

9 BY MR. MINNAH-DONKOH:

10 Q. Page 69, line 24:

11 "Q. Okay. I will repeat my question. Were you terminated  
12 because of one argument or because of a series of arguments  
13 with your supervisor?

14 "A. One argument.

15 "Q. What was the argument about?

16 "A. I didn't like the way he -- I don't -- I don't -- let me  
17 see. I think I came in late and the manner in which he spoke  
18 to me, I didn't like it.

19 "Q. What manner did he speak to you?

20 "A. He yelled and screamed at me in front of the office."

21           THE COURT: That's enough. I think that is what you  
22 had been indicating.

23           THE WITNESS: Yes.

24 Q. Ms. Johnson, before my question to you was you were  
25 terminated because of an argument you had with your supervisor

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Johnson - Minnah-Donkoh

1 so the answer to that question is yes?

2 THE COURT: Are you testifying? I didn't see anybody  
3 swear you?

4 MR. MINNAH-DONKOH: I am repeating her testimony, your  
5 Honor.

6 THE COURT: May be you understand what I said before  
7 when the plaintiff was examined we're going to try and try this  
8 case once.

9 MR. MINNAH-DONKOH: Sure.

10 Q. Ms. Johnson, even though from the portion of your  
11 deposition testimony that I read to you, you alleged that you  
12 didn't like the way your boss had commented or spoke to you  
13 because he screamed and yelled at you. You didn't perceive  
14 that to be discriminatory, did you?

15 A. No, I didn't. May I also add that Jaffrey Prody was a  
16 Caucasian man --

17 Q. Ms. Johnson, there is no question pending.

18 Just to get this out of the way. In this case you  
19 sued Phil Weinberg as an individual defendant?

20 A. Yes.

21 Q. Mr. Weinberg never made any derogatory comments to you, did  
22 he?

23 A. No. He never gave me tough love.

24 Q. Ms. Stein never made any derogatory comments to you about  
25 your gender, did she?

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Johnson - Minnah-Donkoh

1 A. No. She never gave me tough love.

2 Q. She never made derogatory statements to you about your  
3 race?

4 A. No she did not.

5 Q. And as you -- as you testified on direct, the one and only  
6 time in your two-year employment with STRIVE that Mr. Carmona  
7 used the word nigga in conversation to or called you a nigga  
8 was in the tape-recording that was played for jury early on?

9 A. Yes. That's the only time he called me a nigger, yes. It  
10 was three times in that conversation, but that was the one and  
11 only time.

12 Q. Now, in the taped recording that was played for the jury,  
13 before Rob uses the word nigga, he specifically says, "And I  
14 don't mean this derogatory," do you recall that?

15 A. Yes, I do.

16 Q. And Ms. Johnson --

17 THE COURT: Because we don't get to the law here until  
18 much later on, I think I should explain to you what this is all  
19 about, this testimony, or at least what I think it is all  
20 about. One of the elements in several of the charges has to do  
21 with and what is being talked about now is whether or not the  
22 firing was indeed legitimate. The way it happened and what  
23 happens is and the way the law works if the defendant asserts  
24 the legitimacy of the termination, it then befalls the  
25 plaintiff, Ms. Johnson, to show that what he was telling you

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about its legitimacy is what we all pretextual. In other words, it wasn't really word. It was all made up. So that is what this conversation is really all about. It is whether or not there was a legitimate firing and then indeed the plaintiff has and indeed testified to whether or not it was -- what the defendant says was pretextual or it was legitimate way in which she was terminated legitimately.

That is the way the fairly contorted law works. We'll talk about it again. I just want to give you a little heads up on what this was all about that we were listening to because none of it is really the discriminatory aspect. It is much more the legitimate firing versus the pretextual aspect if any.

That's a little soft shoe for you, but we're really anxious to move along.

MR. MINNAH-DONKOH: Yes, your Honor.

BY MR. MINNAH-DONKOH:

Q. Ms. Johnson, is it your testimony that starting from approximately 30 days to 45 days after you started with STRIVE, Rob yelled and belittled you and did horrible things, said horrible things to you?

A. Yes, he did.

MR. MINNAH-DONKOH: Permission to approach witness, your Honor?

THE COURT: You may.

Q. Ms. Johnson, I have handed you Defense Exhibit N in

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Johnson - Minnah-Donkoh

1 evidence. Ms. Johnson Defendants Exhibit N is an e-mail from  
2 you to Robert Carmona dated Friday, February 24th, 2012?

3 A. Correct.

4 Q. And you did in fact send that e-mail to Robert Carmona?

5 A. I did, sir.

6 Q. In that e-mail you state, I need you to critique my  
7 admission essay?

8 A. Yes.

9 Q. That was an admission essay for grad school you were trying  
10 to get into?

11 A. Yes, sir.

12 Q. Ms. Carmona, is it your testimony -- and I want a yes or no  
13 answer --

14 A. Ms. Johnson.

15 Q. Sorry, Ms. Johnson. It is your testimony that despite all  
16 the horrible things that Robert Carmona said and did to you  
17 beginning 30 days after you started with STRIVE in May 2010, in  
18 February of 2012 you were asking him for guidance with respect  
19 to your admission essay for us?

20 A. I was scared of Rob. Yes, I did ask him to critique my  
21 essay. I would have done anything for Rob to leave me alone to  
22 befriend me so the harassment would stop. Yes, I did.

23 Q. Do you have any documents reflecting that you asked him to  
24 review your essay because you were afraid of him?

25 A. Have you ever been bullied.

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Johnson - Minnah-Donkoh

1 Q. I ask you to answer the question.

2 A. Can you please repeat question.

3 THE COURT: Do you have any documents that you were  
4 asked him to review your essay simply because you wanted to get  
5 on his good side?

6 A. No. I do not have any documents stating that, sir.

7 Q. Now, again going back to the beginning of your employment,  
8 approximately 30 days which is when you claim that Robert  
9 Carmona started treating you horribly and making horrible  
10 comments to you, you never reduced any of those complaints to  
11 an e-mail or any other formal writing?

12 A. I told Treworgy.

13 Q. That is what you testified today. My question to you is  
14 you never reduced any of those alleged horrible statements that  
15 Robert Carmona made to you in writing?

16 A. I didn't have to. I witnessed it.

17 Q. So that is enough. I want a simple answer.

18 A. No.

19 Q. The first time you ever reduced any complaints to writing  
20 was in the draft complaint that your attorneys provided to  
21 STRIVE in or around April of 2012, yes?

22 A. Yes.

23 Q. Now, you were asked questions during your direct  
24 examination about Phil Weinberg's investigation of your  
25 complaint. And you testified that to the best of your

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Johnson - Minnah-Donkoh

1 knowledge nothing was done to investigate your complaint. Do  
2 you recall that testimony?

3 A. I testified that I was not given the findings of the  
4 investigation, yes.

5 Q. Ms. Johnson, would you agree with me that in order for  
6 someone to fully investigate any complaint they have to have as  
7 much information as possible?

8 A. I would agree with you with that.

9 Q. Now, that recording of that conversation between yourself  
10 and Rob Carmona as your attorney indicated that was made on  
11 March 14, 2012?

12 A. Yes, sir.

13 Q. Now, you did not make that recording to have something to  
14 listen to on your train ride home, did you?

15 A. Of course not.

16 Q. You made it with the understanding that you would be  
17 possibly be filing a lawsuit?

18 A. Initially, no.

19 Q. Well, you would agree with me that it would have been  
20 important to provide Phil Weinberg with that recording during  
21 his conversation, yes?

22 A. Why would I give him the recording if nothing was being  
23 done? Why?

24 Q. Ms. Johnson, do you not understand my question?

25 A. Sir, you asked me the question that has more than just a

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Johnson - Minnah-Donkoh

1 yes or no answer.

2 Q. Okay. Let's break it down then so you can answer it yes or  
3 no. You never provided Phil Weinberg with a copy of any  
4 recordings that you took including the one with Mr. Carmona?

5 A. Why would I give Phil a copy of the tape that Rob was  
6 just --

7 Q. Ms. Johnson. Ms. Johnson, please. I am not asking why you  
8 would have or not have. The simple question is yes or no. Did  
9 you or did not provide Mr. Weinberg a copy of the tape  
10 recording?

11 A. No. My attorneys provided you a tape and still have not  
12 done anything to this day. Why would I?

13 MR. MINNAH-DONKOH: Move to strike.

14 THE COURT: Ms. Johnson, you really have to sort of  
15 answer the question, but not go on because otherwise this is  
16 not ever going to come to an end.

17 On that score, Mr. Minnah-Donkoh, how long do you have  
18 left?

19 MR. MINNAH-DONKOH: A decent amount that I will not be  
20 able to complete today.

21 THE COURT: You will be able to. Take my word. You  
22 have a half hour to finish.

23 MR. MINNAH-DONKOH: Okay.

24 Q. Now, Ms. Johnson, you testified on direct that it was part  
25 of your or you worked to obtain the extension from the federal

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Johnson - Minnah-Donkoh

1 government of the Pathways Out of Poverty grant?

2 A. Yes.

3 Q. And you worked on that extension with Lisa Stein?

4 A. Yes, I did.

5 MR. MINNAH-DONKOH: May I approach the witness, your  
6 Honor?

7 THE COURT: Yes.

8 MS. MESIDOR: Objection, your Honor. I see a document  
9 is being published to the jury and I still don't --

10 THE COURT: I can't hear you.

11 MS. MESIDOR: Sorry, your Honor. Can you hear me now?

12 THE COURT: Yup.

13 MS. MESIDOR: I said that I see a document is being  
14 published to jury. Can plaintiff let us know what exhibit  
15 defense counsel is referring to?

16 MR. MINNAH-DONKOH: Plaintiff's Exhibit 40.

17 MS. MESIDOR: Perhaps, your Honor, if counsel could  
18 announce what the exhibit is before he gives it to the witness  
19 so we don't take unnecessary time.

20 THE COURT: Right. I think that is valuable. Let's  
21 do that if we can, Mr. Minnah-Donkoh.

22 BY MR. MINNAH-DONKOH:

23 Q. Ms. Johnson, I have handed you Plaintiff's Exhibit 40,  
24 which was the final modification to the Pathways Out of Poverty  
25 grants extended it until June 30th, 2012.

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1 MS. MESIDOR: Your Honor, I am not at the exhibit yet.  
2 My apologies.

3 Q. Ms. Johnson, that is the final modification that was made  
4 to the Pathways Out the Poverty grants extended it until  
5 June 30th, 2012?

6 A. No. I don't know. I didn't -- I see this is addressed to  
7 Lisa, not to Brandi.

8 Q. On the first page of this document it is dated  
9 January 24th, 2012?

10 A. Yes.

11 Q. You were still employed by STRIVE in January 2012, yes?

12 A. Yes, I was.

13 Q. Regardless of whether you received this document or notice,  
14 you were aware the grant was extended to June 30th, 2012, yes?

15 A. Yes, I was aware.

16 Q. On June 11th, when Mr. Weinberg sat down with you to tell  
17 you that your employment was ending, he told you that it was  
18 ending pursuant to the Pathway Poverty grant ending, yes?

19 A. Yes, he did.

20 Q. He told you that your position was tied to the grant, yes?

21 A. Yes, he did.

22 Q. He tape-recorded that particular conversation?

23 A. Yes, I did.

24 Q. At no point in time during that conversation did you  
25 express surprise?

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Johnson - Minnah-Donkorh

1 A. Can we hear the tape?

2 Q. Sure. Since it is exhibits that were proffered by your  
3 attorney specifically Plaintiff's Exhibit --

4 THE COURT: There is only two that are in. So if this  
5 is one of them that is fine. If it is not, I would urge you to  
6 go on along your merry way.

7 MR. MINNAH-DONKOH: It is one of the exhibits, your  
8 Honor. It is Plaintiff's Exhibit --

9 THE COURT: It can only be --

10 MR. MINNAH-DONKOH: 49.

11 THE COURT: I am not at all clear if that is one of  
12 them. Let's see. You have a list just like mine so you can  
13 tell me or you have told my and I take your word for it.

14 MR. MINNAH-DONKOH: Your Honor, since this was an  
15 exhibit --

16 THE COURT: They are all recorded by the plaintiff and  
17 they are all inadmissible other than the couple I agreed to and  
18 the ones you essential agreed to as with the.

19 MR. MINNAH-DONKOH: Defense counsel will request  
20 permission since counsel played a previous recording for the  
21 jury.

22 THE COURT: What is the number?

23 MR. MINNAH-DONKOH: 49.

24 MS. MESIDOR: Your Honor, I don't have the ability to  
25 play that recording on my computer unless he has a file he can

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1 e-mail and use it. Because it is not something I was using. I  
2 don't have it and my computer does not have a CD drive.

3 THE COURT: Sorry.

4 MS. MESIDOR: If somebody has an external drive I will  
5 be more happy.

6 THE COURT: I don't think you can. I think you should  
7 have brought them all. You didn't know they were all going to  
8 be inadmissible. This is with one you agreed to.

9 MS. MESIDOR: But today I only had my client's direct  
10 testimony.

11 THE COURT: You had all or should have had all the  
12 recordings because you didn't know they were all inadmissible.

13 MS. MESIDOR: I was only using one recording in my  
14 client's --

15 THE COURT: It doesn't matter what you were using.  
16 You have an adversary who in fact has --

17 MS. MESIDOR: Your Honor, how could I take  
18 responsibility for what my adversary --

19 THE COURT: They are your recordings.

20 MS. MESIDOR: I am sorry?

21 THE COURT: Do you have a transcript?

22 MR. MINNAH-DONKOH: Yes, your Honor.

23 MS. KREBS: Your Honor, I am taking steps to see if we  
24 can get it e-mailed.

25 THE COURT: No. We're not going to spend the time

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Johnson - Minnah-Donkoh

1 waiting. Just move along. We'll have to work something out so  
2 maybe we can listen to it bright and early.

3 MR. MINNAH-DONKOH: Well, your Honor --

4 THE COURT: Unless you have a better way of  
5 complaining it. Once again my problem I am afraid is with the  
6 plaintiff in terms of the recordings what should be here. I  
7 don't want to hear anything why it wasn't. I heard your view.  
8 It doesn't appeal to me. There is nothing we can do about it.

9 MR. MINNAH-DONKOH: If I may suggest something. Being  
10 that plaintiff's counsel provided a transcript of the recording  
11 at this point in time I know your Honor previously ruled  
12 against it, but we'll stipulate to it what plaintiff counsel  
13 has provided with respect to the conversation on the tape.

14 THE COURT: Whatever has been stipulated to me is fine  
15 with me. You have 20 minutes left. So use it anyway you  
16 choose.

17 BY MR. MINNAH-DONKOH:

18 Q. This is from Plaintiff's proposed Exhibit 50. Starting  
19 with line 12 from Phil Weinberg I will indicate which  
20 individual is speaking. Phil Weinberg: Um so clearly--

21 THE COURT: How many pages is this? How much long is  
22 this?

23 MR. MINNAH-DONKOH: It is not very long, your Honor.  
24 It is approximately six pages, but I am going to read a portion  
25 of.

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Johnson - Minnah-Donkoh

1                   THE COURT: If you read a page or two that is okay,  
2 otherwise we'll hear it tomorrow morning.

3                   MR. MINNAH-DONKOH: Then we'll hear it tomorrow  
4 morning, your Honor.

5                   THE COURT: But that will be all we hear in terms of  
6 this witness's cross tomorrow morning.

7                   MR. MINNAH-DONKOH: Judge, so we have the record for  
8 tomorrow morning, Ms. Johnson, I am going to ask you so we have  
9 on record when Mr. Weinberg advised you that your employment  
10 was coming to an end as a result of the grant which your  
11 position was tied to ending you expressed no surprise about  
12 what he was telling you, did you?

13 A. I wasn't surprised. I was told that -- I figured --

14 Q. Did you or did you --

15                   THE COURT: She said she wasn't surprised.

16 Q. Ms. Johnson, you've testified differently in the past as to  
17 what your reaction was when he advised you your position was  
18 coming to an end, haven't you?

19 A. What I did testify to, sir.

20 Q. Directing the Court's attention to page 145 of plaintiff's  
21 May 22nd, 2013 deposition transcript, line 11:

22 "Q. So, Ms. Johnson, isn't your testimony that the first time  
23 you ever found out that your employment with STRIVE would be  
24 coming to an end in 2012 was on June 11th?

25 "A. Yes."

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Johnson - Minnah-Donkoh

1                   THE COURT: Did you make that answer to that question?

2 Q. Question--

3                   THE COURT: Wait a minute. There is only one leader  
4 here.

5                   MR. MINNAH-DONKOH: Sorry, your Honor. I didn't hear  
6 what you said.

7                   THE COURT: When you think you heard something, you  
8 should say something and then you won't have that problem,  
9 right?

10                  MR. MINNAH-DONKOH: Yes.

11                  THE COURT: Did you make that answer to that question?

12                  THE WITNESS: Yes.

13                  THE COURT: Do you want to go further? Go right  
14 ahead.

15 BY MR. MINNAH-DONKOH:

16 Q.

17 "Q. And during that conversation on June 11th, with Phil  
18 Weinberg what did he say to you?

19 "A. I don't recall. I don't remember the verbatim  
20 conversation with Mr. Weinberg."

21                  Were you asked that question and did you give that  
22 answer?

23 A. I-- I guess. Yes.

24 Q. Okay.

25 "Q. Okay. On the sum and substance what did he tell you?

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Johnson - Minnah-Donkoh

1 "A. The Pathways grant had come to an end and I will be  
2 terminated, and I asked him was he serious and he think -- I  
3 think he said yes or I believe. I asked him if he was  
4 serious."

5           Were you asked that and did you give that answer?

6 A. I believe so.

7 Q. Okay.

8 "Q. And after he told you that, yes, he was serious, did you  
9 say anything in response?

10 "A. Probably something sarcastic. I don't recall."

11           Were you asked that question and did you give that  
12 answer?

13 A. Yes.

14 Q. So we should expect hear what you testified to at your  
15 deposition on the audio recording?

16 A. The tape in the entirety or portions of it?

17 Q. We're going to play exactly what you provided to us?

18 A. Okay.

19 Q. So we should hear what you testified to in your deposition  
20 on the audio recording tomorrow?

21 A. I gave verbatim, but I did give to the best of my  
22 knowledge, yes.

23 Q. You would agree with me that whether you -- whether you  
24 expressed sarcasm about what Mr. Weinberg was telling you is  
25 pretty important, correct?

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Johnson - Minnah-Donkoh

1 A. Why would it be important?

2 Q. You are saying today that you did not?

3 A. I did not what, sir?

4 Q. Your testimony today is that you did not stay or you did  
5 not express any surprise when he told you that your employment  
6 was coming to an end?

7 A. Okay.

8 Q. In your deposition transcript you testified that you asked  
9 him are you serious and responded sarcastically?

10 A. I said I couldn't give you verbatim but I probably did  
11 respond sarcastically. That is what is transcribed.

12 Q. We should hear some form of sarcasm in the audio recording  
13 tomorrow?

14 A. I hope so, yes.

15 Q. Before I forget, Ms. Johnson, you testified earlier that  
16 after you filed your complaint Rob Carmona walked by you with  
17 Earnest Johnson and made a comment and made a comment to the  
18 effect, We're going to put this bitch in a smash.

19 Do you recall that testimony?

20 A. Yes I do.

21 Q. Ms. Johnson, the truth of the matter Rob Carmona never said  
22 we're not going to put this bitch in a smash, did you?

23 A. Was you there?

24 Q. No. I was not there.

25 A. That is what I heard.

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Johnson - Minnah-Donkoh

1 Q. Okay?

2 MR. MINNAH-DONKOH: Permission to approach the  
3 witness?

4 THE COURT: Yes, indeed.

5 MR. MINNAH-DONKOH: Plaintiff's Exhibit 45.

6 THE COURT: As I see it here that is inadmissible  
7 hearsay. In fact you have some special reason why it should  
8 have a different result, we'll have to worry about it now  
9 because we're not going to keep going like this.

10 MR. MINNAH-DONKOH: Your Honor, she testified that Mr.  
11 Carmona said we're going to put this specifically bitch in a  
12 smash and this is a text message from Ms. -- well, this is a  
13 text message from plaintiff. So it is a party opponent  
14 admission. Furthermore, it is being used for impeachment  
15 purposes.

16 THE COURT: Let me see what you got.

17 Out. Don't even think about it.

18 Next. You have 15 minutes.

19 BY MR. MINNAH-DONKOH:

20 Q. Now, Ms. Johnson, as part of your retaliation claim, you  
21 testified that Rob Carmona went around telling other coworkers  
22 at STRIVE about the complaint you filed?

23 A. Yes, he did.

24 Q. Ms. Johnson, you told the coworkers about the complaint you  
25 filed, did you not?

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Johnson - Minnah-Donkoh

1 A. No. I was asked. I did not go around telling and I  
2 indicated that to Phil.

3 Q. Ms. Johnson, it is your testimony that you did not tell  
4 April Bland?

5 A. It is any testimony that April Bland came to me and I did  
6 cooperate. I did say, yes, I did. I did not go for April  
7 Bland. She came to me after she heard the rumor.

8 Q. Ms. Johnson, you also testified on several occasions that  
9 you never complained because you did not know who to complain  
10 to. Do you recall that testimony?

11 A. Yes. I am sorry. I complained but nothing was done so I  
12 didn't take further action providing the tape. So, yes.

13 Q. That March 2012 incident with Rob Carmona conversation  
14 where Carmona said you act like a nigga --

15 A. Yes.

16 Q. Phil Weinstein was working for STRIVE, by that time,  
17 correct?

18 A. Yes, he was.

19 Q. Well, he started in November of 2011, yes?

20 A. I wasn't there when he started. I think when he came back  
21 in January Phil was -- I don't know his official start date,  
22 sir.

23 Q. As of the date of conversation between yourself and Mr.  
24 Carmona where he said you act like a nigga, Phil Weinberg was  
25 already CEO?

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Johnson - Minnah-Donkoh

1 A. Yes, he was.

2 Q. And you never went to Phil Weinberg to tell him about this  
3 incident with Mr. Carmona and so again your attorneys served a  
4 draft complaint in April of 2012, yes?

5 A. Yes.

6 Q. Ms. Johnson, even though your employment ended effective  
7 June 11th, 2012, you were paid throughout the end of the month,  
8 yes?

9 A. Yes, I was.

10 MR. MINNAH-DONKOH: Just a moment, your Honor, to  
11 confer with my co-counsel.

12 THE COURT: Very well.

13 Q. Ms. Johnson, during the conversation that we're going to  
14 hear tomorrow with Phil Weinberg when he told you that your  
15 employment was going to end as a result of the grant ending,  
16 did you tell Mr. Weinberg ahead of that conversation you were  
17 taping him?

18 A. No.

19 Q. You secretly taped the conversation?

20 A. I think -- I guess I taped my conversations, yes. I had to  
21 find some way to protect myself, yes.

22 Q. Did you have that conversation with Mr. Carmona as well and  
23 you secretly taped that conversation as well, yes?

24 A. I kept a record. I started to keep a record. So if you  
25 want to used the phrase secretly taped as a way to prove --

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Johnson - Minnah-Donkoh

1 Q. You secretly taped them?

2 A. Yes. I taped them to prove what was going on.

3 Q. The first time you consulted with an attorney about  
4 bringing this lawsuit was in March of 2012, yes?

5 A. I believe so.

6 Q. Again you started working for STRIVE in 2010?

7 A. Yes, sir.

8 Q. Even though you claim Rob started harassing you in May of  
9 2010 you never discussed it with an attorney in 2010?

10 A. No.

11 Q. Even though you claim Mr. Carmona was harassing you  
12 throughout the course of your employment, you never consulted  
13 with an attorney in 2011, did you?

14 A. No, I did not.

15 (Continued on next page)

16

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23

24

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D8qnjoh7

Johnson - cross

1 Q. You waited until approximately two months?

2 A. I waited until --

3 Q. You waited approximately until two or three months before  
4 your employment was about to come to an end pursuant to the  
5 grant to consult with an attorney?

6 A. My employment was never coming to an end. I was unaware of  
7 that. You guys keep saying that, but that was never the case.

8 Q. Ms. Johnson, the jury will get to hear the tape tomorrow.

9 A. OK, sir.

10 Q. Ms. Johnson, do you know a lady by the name of Cammie  
11 Crawford?

12 A. I sure do.

13 Q. She is a good friend of yours, correct?

14 A. Yes. Cammie and I used to be really good friends, yes.

15 Q. Is it your testimony that you are no longer good friends?

16 A. It is my testimony that our relationship is not as strong  
17 as it was prior to me leaving STRIVE.

18 Q. Do you still keep in touch with her?

19 A. I do from time to time.

20 Q. Maria Ortiz, is that a friend of yours?

21 A. She -- yes.

22 MR. MINNAH-DONKOH: No further questions, your Honor.

23 THE COURT: Very well.

24 MR. MINNAH-DONKOH: Subject to playing the tape  
25 tomorrow morning, your Honor.

D8qnjoh7

Johnson - cross

1           THE COURT: Very well.

2           Any brief redirect?

3           MS. MESIDOR: Yes, your Honor.

4           THE COURT: Just so that we have the ground rules,  
5 your redirect is not with respect to anything you could have  
6 asked and failed to ask on direct.

7 REDIRECT EXAMINATION

8 BY MS. MESIDOR:

9 Q. Ms. Johnson, on your --

10          MS. MESIDOR: Excuse me. Can you hear me, your Honor?

11          THE COURT: Yes.

12 Q. Ms. Johnson, on your direct testimony you were asked  
13 regarding whether or not you had ever used the word nigger in  
14 the workplace?

15 A. Yes.

16 Q. Now, opposing counsel had read you a portion of your  
17 deposition transcript and you attempted to correct him in terms  
18 of the context of that deposition testimony. Do you recall  
19 that?

20 A. Vaguely, yes.

21 Q. I am going to draw your attention to the plaintiff's  
22 deposition testimony, page 155, beginning at line 25.

23 Ms. Johnson, I am going to read a portion of your deposition  
24 testimony, the portion that opposing counsel read as well as  
25 the follow-up.

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Johnson - redirect

1                   THE COURT: I don't need to hear his again. We should  
2 have done it at the same time like we did with the other  
3 excerpt.

4                   MS. MESIDOR: Your Honor, would you like me to then to  
5 just start from the followup question?

6                   THE COURT: Yes. But I wish we had done it in  
7 context.

8                   MS. MESIDOR: It is one additional line, your Honor.  
9 To put it into appropriate context, if you would still permit  
10 me.

11                  THE COURT: Absolutely.

12                  MS. MESIDOR: Thank you. Page 155 beginning at line  
13 25:

14 "Q. OK. Ms. Johnson, during your tenure at STRIVE did you  
15 ever use the word nigga in your conversation with coworkers?

16 "A. I don't recall.

17 "Q. You don't recall if you ever used the word nigga in the  
18 conversation with coworkers?

19 "A. I don't speak like that, no."

20                  Is that your full testimony on whether or not you have  
21 used the word nigger in your employment at STRIVE?

22 A. Yes, ma'am.

23 Q. Referring you quickly to Defendants' Exhibit F that's  
24 already in evidence. It is the e-mail from Rob Carmona to the  
25 affiliates.

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Johnson - redirect

1                   Do you have that before you, ma'am?

2 A. Yes. Yes. I'm sorry. Yeah, I have it.

3 Q. Do you have it before you?

4 A. Yes, I'm here.

5 Q. Ms. Johnson, does it say anywhere in the e-mail that  
6 Mr. Carmona is happy that you joined STRIVE or anything to that  
7 effect?

8 A. It said, "It is my pleasure to introduce STRIVE's affiliate  
9 services coordinator."

10 Q. Other than that, is there any other indication as to what  
11 defense counsel was asking you as to whether or not Mr. Carmona  
12 was excited about you joining STRIVE?

13 A. No, there was just a generic e-mail I believe.

14 Q. I am going to ask you now to bring your attention to  
15 Defendants' Exhibit G --

16 A. OK.

17 Q. -- which was the purported job description that was brought  
18 before you. Do you have the job description, Ms. Johnson?

19                   It says STRIVE at the top. It says Bates stamp No.  
20 STRIVE 00258.

21 A. Yes, ma'am.

22 Q. Do you have it?

23 A. Yes.

24 Q. Ms. Johnson, have you ever received this document?

25 A. No. I don't recall this document. It says department

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Johnson - redirect

1 fiscal. When I first came on board, it was national, and I  
2 don't recall receiving this document. I recall asking for my  
3 job description, but this wasn't the job description.

4 Q. Is it your testimony that this was not the job description  
5 that was provided to you?

6 A. Yes.

7 Q. It also says here that you report to the CFO.

8 A. Yes.

9 Q. Do you see that?

10 A. I do.

11 Q. When you started at STRIVE, did you report to the CFO?

12 A. No, I reported to Rob Carmona.

13 Q. Was what Rob Carmona's position at STRIVE at the time?

14 A. President.

15 Q. Was this the first time that you indicated to opposing  
16 counsel that you had never seen this document?

17 A. No, I think I did this in deposition, I believe.

18 Q. I am now going to call your attention to Exhibit J, which  
19 was the performance appraisal.

20 A. Yes.

21 Q. Are you there?

22 A. Yes, ma'am.

23 Q. For Exhibit J, what department does it say that you belong  
24 to as of the date of this performance appraisal October 21,  
25 2011?

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Johnson - redirect

1 A. National.

2 Q. Turning your attention to the last page of Exhibit J.

3 A. OK.

4 Q. What does it say that the average numerical rating for your  
5 performance evaluation is?

6 A. A 3.5.

7 Q. What is that categorized as?

8 A. According to the second page, it says meets expectations is  
9 a 3, so I guess it's between very good and meets expectations.

10 Q. I'm going to turn your attention to Exhibit K. It is the  
11 e-mail from Rob Carmona dated December 28, 2011.

12 A. OK.

13 Q. Do you have it before you, ma'am?

14 A. Yes.

15 Q. I am going to draw your attention to the very last sentence  
16 of Mr. Carmona's e-mail. Do you see that, where it begins  
17 "additionally"?

18 A. Additionally, yes.

19 Q. It says, "Additionally you guys are going to be taking the  
20 show on the road in the very near future."

21 Do you know what Mr. Carmona meant by taking the show  
22 on the road?

23 A. I assume --

24 MR. MINNAH-DONKOH: Objection.

25 THE COURT: Sustained.

D8qnjoh7

Johnson - redirect

1 BY MS. MESIDOR:

2 Q. Ms. Johnson, was there any particular event or anything  
3 going on at STRIVE at the time of this e-mail that you can use  
4 as a reference as to what taking the show on the road meant?

5 A. I traveled for STRIVE to bring some of the affiliates  
6 online, so my -- do I do a presumption or no? Can I say?

7 Q. You can speak.

8 A. I'm sorry.

9 As the affiliate service person, I would be going to  
10 some of the locations to help Christina bring the affiliates  
11 online with ETO and/or for data collection and things of that  
12 nature.

13 Q. How often after the December 28, 2011 e-mail did you  
14 continue to travel on behalf of STRIVE?

15 A. Up until I had a meeting with Phil, Christina and I were  
16 supposed to go away I think the 14th and the 15th. I was  
17 unsure in regards for health reasons if I was going to go, but  
18 I believe I told them I was fine, and they cancelled the trip.

19 Q. I'm going to bring your attention to a Defendants' Exhibit  
20 11. I'm sorry. I'm very sorry.

21 A. OK.

22 Q. I had a very senior moment. Exhibit L.

23 A. OK. Yes.

24 Q. Do you have that before you, ma'am?

25 A. Yes, I do.

D8qnjoh7

Johnson - redirect

1 Q. Now, I am going to draw your attention to the first  
2 paragraph, the last line, where it says, "However, on January  
3 25 there was another incident that demonstrated a continued  
4 inability to maintain this as a status quo."

5 Do you see that?

6 A. Yes, ma'am.

7 Q. Do you know what the January 25 incident refers to?

8 A. Yes, I do.

9 Q. What does it refer to, ma'am?

10 A. Christina and Nancy got into an argument over -- I'm sorry.  
11 Christina and Nancy got into an argument over some work. Lisa  
12 and April was in a meeting. Nancy came in and got my opinion  
13 in regards to did Corinne proceed to do something inaccurately.  
14 I told Christina that it was inaccurate, but wait until Lisa  
15 and April get out the meeting. Christina blew up, she stormed  
16 off, she started crying and yelling and screaming. Nancy  
17 locked Christina out of the RAG system.

18 Q. What is the RAG system?

19 A. It is the Department of Labor database. She told April  
20 that she was the one who locked Christina out of the RAG  
21 system. To my knowledge, April --

22 MR. MINNAH-DONKOH: Objection.

23 THE COURT: Sustained.

24 A. To my knowledge, April --

25 MR. MINNAH-DONKOH: Objection.

D8qnjoh7

Johnson - redirect

1           THE COURT: I sustained the objection.

2           THE WITNESS: OK.

3           THE COURT: So you can't answer.

4           THE WITNESS: I'm sorry. I'm sorry.

5           THE COURT: It's all right. All right. I think we  
6 should move along, unless you are finished.

7           MS. MESIDOR: No, your Honor.

8 BY MS. MESIDOR:

9 Q. The document, Exhibit L, you had previously testified that  
10 both you and Ms. Saenz had received the same document?

11 A. Yes, ma'am.

12 Q. After this document, were there any further incidents with  
13 Ms. Saenz?

14 A. Not with me. I wanted to be quiet. I was tired.

15 Q. Does Ms. Saenz continued to be employed with STRIVE?

16 A. Yes, she does.

17 Q. Opposing counsel had previously asked you about an argument  
18 that you had with your previous supervisor at Commerce Key.

19           Do you recall that?

20 A. Yes.

21 Q. Did your previous supervisor at Commerce Key ever call you  
22 a nigger?

23 A. Not once.

24 Q. Opposing counsel had made a point during his  
25 cross-examination to highlight the date of the recording that

D8qnjoh7

Johnson - redirect

1 you had with Mr. Carmona and its approximation as to when you  
2 were terminated from STRIVE. How much time did elapse between  
3 the time that you made the recording with Mr. Carmona and when  
4 your attorney made a complaint to STRIVE regarding  
5 Mr. Carmona's behavior?

6 A. It was --

7 MR. MINNAH-DONKOH: Objection.

8 THE COURT: You can answer if you know the answer.

9 A. It was in April.

10 Q. When was the recording made?

11 A. March.

12 Q. Do you know whether it was the beginning or end of April?

13 A. It was right before my birthday. April 15 is my birthday,  
14 so I believe it was the middle of April.

15 Q. To your knowledge, does Mr. Carmona continue to work on  
16 STRIVE's behalf?

17 A. Yes.

18 MR. MINNAH-DONKOH: Objection.

19 THE WITNESS: Can I --

20 MS. MESIDOR: No further questions, your Honor.

21 THE COURT: All right.

22 Everybody, I think you have had a long day. We will  
23 adjourn now, and I will see you at 9 o'clock for coffee and  
24 cake.

25 Do not discuss this case amongst yourselves or with

D8qnjoh7

Johnson - redirect

1 anybody else. Hopefully we can start at 9 or as close  
2 thereafter as possible. If you come earlier, you get first  
3 dibs.

4 Good night, everybody.

5 (Continued on next page)

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1 (Jury not present)

2 THE COURT: You may step down.

3 THE WITNESS: Thank you.

4 THE COURT: I want you to both understand that this  
5 tape which should have been here, should have been played today  
6 by one or both of you as long as you had stipulated to it, is  
7 the totality of what's left in the cross-examination world, and  
8 by extension the redirect world. Have a good evening.

9 MS. MESIDOR: Thank you, your Honor.

10 MS. KREBS: Thank you, your Honor.

11 MR. MINNAH-DONKOH: Your Honor?

12 THE COURT: Yes.

13 MR. MINNAH-DONKOH: Just one very quick procedural  
14 issue. Again, with respect to the tape recording tomorrow,  
15 since these were audio recordings that plaintiff produced and  
16 wanted to use, we ask that we play it on the same medium that  
17 they played their recording on.

18 THE COURT: Say that again?

19 MR. MINNAH-DONKOH: We would ask that, being that the  
20 tape recording we wish to play tomorrow morning was a recording  
21 that was obviously produced by plaintiff and proffered as an  
22 exhibit by plaintiff, we would ask to play it on the same  
23 medium that plaintiff's counsel used today.

24 THE COURT: On the same what?

25 MR. MINNAH-DONKOH: Medium. In other words, the same

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1 computer the same speakers.

2 THE COURT: Yes. Well, I assume you will produce it  
3 right?

4 MS. MESIDOR: Your Honor, we produced it. They have a  
5 copy.

6 THE COURT: If you have anything different, you ought  
7 to look and talk tonight. It won't be the first time. Indeed,  
8 let's not have two different versions.

9 MS. MESIDOR: There aren't two different versions,  
10 your Honor. There is only one version.

11 MS. KREBS: Your Honor, the equipment.

12 MS. MESIDOR: If opposing counsel would like to ask me  
13 as a courtesy if I can play on it at same medium, that is a  
14 different request than what is certainly before the Court.

15 THE COURT: It is fine if you play it on the same  
16 medium. I am not sure I know what that means. But indeed I  
17 will see you in the morning.

18 MS. MESIDOR: Your Honor, is it all right that we  
19 leave the exhibits and everything here?

20 THE COURT: I think so.

21 I think she left a lot on the desk in front of her  
22 that you might want to collect. I assume they left it on the  
23 chair. Maybe somebody took them with them.

24 MS. MESIDOR: Your Honor, we also have a copy of  
25 exhibits for the witness. Is it permissible to allow us to

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1 leave it there so we don't have to go back and forth?

2 THE COURT: You are not going to use it anymore for  
3 that witness because she's finished.

4 MS. MESIDOR: No, she is indeed finished, your Honor.  
5 I am talking about in general. I made a separate binder of set  
6 copies for the witness. By your permission, if I could allow  
7 it to be left at the witness stand, so I can direct the witness  
8 to the exhibits as opposed to going back and forth?

9 THE COURT: Those exhibits that are there?

10 MS. MESIDOR: Not those particular exhibits. I am  
11 talking about plaintiff's exhibits.

12 THE COURT: In the future?

13 MS. MESIDOR: Yes, your Honor.

14 THE COURT: Absolutely.

15 MS. MESIDOR: Thank you.

16 THE COURT: Anything else?

17 (Adjourned to Tuesday, August 27, 2013 at 9:00 a.m.)

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